

**CAUSE NO. 2016-24799**

<b>GREG MOODY,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>REFINERY SPECIALTIES INC.,</b>	§	
	§	
<b>Defendant.</b>	§	<b>189<sup>th</sup> JUDICIAL DISTRICT</b>

**INDEX OF EXHIBITS**

<b><u>EXHIBIT</u></b>	<b><u>DESCRIPTION</u></b>
<b>A</b>	All executed process in this case (None. The undersigned accepted service without citation.);
<b>B</b>	Pleadings asserting causes of action: <ul style="list-style-type: none"> <li>a. Plaintiff's Original Petition</li> <li>b. Plaintiff's First Amended Original Petition</li> </ul>
<b>C</b>	All Orders signed by the State Court Judge;
<b>D</b>	Docket Sheet; and
<b>E</b>	A list of all Counsel of Record included addresses, telephone numbers and parties represented.
<b>F</b>	Miscellaneous filings in state court separately tabbed in date order: <ul style="list-style-type: none"> <li>1. Civil Process Request Form</li> <li>2. Defendant's Refinery Specialties Inc.'s Original Answer and Affirmative Defenses</li> <li>3. Defendant's Refinery Specialties Inc.'s Certificate of Written Discovery</li> <li>4. Notice of Submission on Defendant's Refinery Specialties Inc.'s Motion for No-Evidence Motion for Summary Judgment</li> <li>5. Defendant's Refinery Specialties, Inc.'s Motion for No-Evidence Motion for Summary Judgment</li> <li>6. Plaintiff Greg Moody's Response to Defendant's Motion for No-Evidence Summary Judgment (with Exhibits A – H)</li> <li>7. [Proposed] Order Granting Refinery Specialties Inc.'s Motion for No-Evidence Motion for Summary Judgment</li> <li>8. [Proposed] Order Denying Motion for Summary Judgment</li> <li>9. Plaintiff's Unopposed Motion for Continuance</li> <li>10. [Proposed] Order Granting Unopposed Motion for Continuance</li> </ul>

# **EXHIBIT “A”**

# **EXHIBIT “B”**

# **Exhibit “a”**

4/19/2016 8:41:39 PM  
Chris Daniel - District Clerk Harris County  
Envelope No. 10199620  
By: Krystal Franklin  
Filed: 4/19/2016 8:41:39 PM

2016-24799 / Court: 189

Cause No. \_\_\_\_\_

GREG MOODY  
Plaintiff

§  
§  
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§

IN THE DISTRICT COURT

V.

HARRIS COUNTY, TEXAS

REFINERY SPECIALTIES INC.  
Defendant

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

COMES NOW GREG MOODY, Plaintiff, and complains of REFINERY SPECIALISTS INC., Defendant, and for cause of action shows:

Discovery is intended to be conducted under Level II pursuant to Rule 190.1 of the Texas Rules of Civil Procedure.

I.

Plaintiff, GREG MOODY is an individual residing in Harris County, Texas. Defendant, REFINERY SPECIALISTS INC. is a corporation licensed and registered to do business in the State of Texas and service on the corporation can be effectuated by serving its registered agent Mickey D. Tucker, 38106 Highway 3346, Hempstead, Texas 77445.

The true name or names of any and all partnerships, unincorporated associations, private corporations, and/or individuals doing business under the assumed names noted above, if different than the names alleged herein, will be substituted in this lawsuit pursuant to Texas Rule of Civil Procedure 28 when such true name or names become known.

II.

Venue is proper in Harris County, Texas since part or all of the cause of action arose in Harris County. Also all parties agree that Harris County is the proper venue.

III.

At all times material to this cause of action and prior to his termination, Plaintiff was an employee of Defendant.

On or about October 2, 2013, Plaintiff received serious injuries while working for the Defendant, in the course and scope of his employment. These injuries required the Plaintiff to seek medical treatment. On or about December 31, 2013, Plaintiff was immediately terminated because he sought medical attention.

PLAINTIFF'S ORIGINAL PETITION - PAGE 1

IV.

The above and foregoing acts by Defendant violated Section 451 of Texas Labor Code in that Defendant terminated and otherwise discriminated against Plaintiff for pursuing a Workers' Compensation claim and/or benefits.

V.

As a direct result of Defendant's actions, Plaintiff has suffered damages including, but not limited to lost wages since the date of termination, up to present and will continue to suffer lost earnings in the future and has suffered lost benefits, such as health insurance, vacation pay, holiday pay, and sick leave, since termination and will continue to suffer these losses in the future, in an amount that is within the jurisdictional limits of the court and for which Plaintiff prays recovery from Defendant along with prejudgment interest.

VI.

As a direct result of Defendant's actions, Plaintiff suffered additional damages including but not limited to mental anguish for which the Plaintiff prays recovery from Defendant.

VII.

The above and foregoing acts of Defendants was intentional and malicious and part of a common plan or scheme to terminate and otherwise discriminate against those employees who file Workers' Compensation claims and as a result, Plaintiff seeks recovery of exemplary damages in an amount within the jurisdiction limits of the Court.

VIII.

Plaintiff has retained the services of Kevin A. Murray, a licensed attorney to pursue this claim on Plaintiff's behalf. Plaintiff prays that he be rewarded reasonable attorney's fees and costs of Court.

IX.

Plaintiff's damages far exceed the minimum jurisdictional requirements of this Honorable Court. Plaintiff is only seeking damages of monetary relief of \$100,000.00 but not more than \$200,000.00, including damages of any kind, penalties, costs expenses, pre-judgment interest, and attorney fees.

X.

REQUEST FOR DISCLOSURE

PLEASE PROVIDE THE FOLLOWING INFORMATION AS REQUIRED BY RULE 194.2 OF THE TEXAS RULES OF CIVIL PROCEDURE.

(1) The correct names of the parties to the lawsuit.  
ANSWER:

(2) The name, addresses, and telephone numbers of any potential parties.  
ANSWER:

(3) The legal theories and, in general, the factual bases of your claims or defenses.  
ANSWER:

(4) The amount and any method of calculating economic damage.  
ANSWER:

(5) The name, address and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.  
ANSWER:

(6) For any testifying expert:  
a. The expert's name, address and telephone number;  
b. The subject matter on which the expert will testify;  
c. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to your control documents reflecting such information;  
d. If the expert is retained by employed by, or otherwise subject to your control:  
1. All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and  
2. The expert's current resume and bibliography.  
ANSWER:

(7) Any discoverable indemnity and insuring agreements.  
ANSWER:

(8) Any discoverable settlement agreements.  
ANSWER:

(9) Any discoverable witness statements.  
ANSWER:

(10) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;  
ANSWER:

(11) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party.  
ANSWER:

(12) The name address and telephone number of any person who may be designated as a responsible third party.  
ANSWER:

**WHEREFORE**, Plaintiff requests that Defendant be cited to appear and that on final trial Plaintiff recover:

- 1) Damages for lost wages in the past, along with prejudgment interest as provided by law;
- 2) Damages for lost earnings in the future;
- 3) Damages for lost benefits, such as health insurance, vacation pay, holiday pay, and sick leave in the past and in the future;
- 4) Damages for mental anguish in the past and in the future;
- 5) Exemplary damages;
- 6) Attorney's fees and cost of court;
- 7) Post judgment interest as provided by law; and
- 8) Such other and further relief to which Plaintiff may be entitled.



Respectfully submitted,

/s/ Kevin A. Murray

Kevin A. Murray

State Bar. No. 24007720

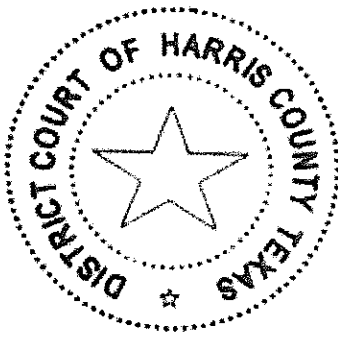
Yorktown Building

1776 Yorktown, Suite 350

Houston, Texas 77056

Tel. (713) 355-5500

Fax. (713) 212-0290



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 69866759

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)

# **Exhibit “b”**

10/9/2017 8:25 PM  
Chris Daniel - District Clerk Harris County  
Envelope No. 19952896  
By: ARIONNE MCNEAL  
Filed: 10/9/2017 8:25 PM

CAUSE NO. 2016-24799

GREG MOODY,  
Plaintiff,

v.

REFINERY SPECIALTIES, INC.,  
Defendant.

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

189<sup>TH</sup> JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED PETITION

COMES NOW GREG MOODY, Plaintiff, filing his first amended petition complaining of REFINERY SPECIALISTS INC., Defendant, and for cause of action shows:

Discovery and Relief Sought

Discovery is intended to be conducted under Level II pursuant to Rule 190.1 of the Texas Rules of Civil Procedure.

Plaintiff's damages far exceed the minimum jurisdictional requirements of this Honorable Court. Plaintiff is only seeking damages of monetary relief of \$200,000.00 but not more than \$1,000,000.00, including damages of any kind, penalties, costs expenses, pre-judgment interest, and attorney fees

I.

1.1 Plaintiff, GREG MOODY is an individual residing in Harris County, Texas. Defendant, REFINERY SPECIALISTS INC. is a corporation licensed and registered to do business in the State of Texas, service of this amended petition on the corporation can be effectuated by serving its attorney of record, Ms. Tracy Graves Wolf, LEWIS, BRISBOIS, BISGAARD, & SMITH, LLP, 2100 Ross Avenue, Suite 2000, Dallas, Texas 75201

1.2 The true name or names of any and all partnerships, unincorporated associations, private corporations, and/or individuals doing business under the assumed names noted above, if different than the names alleged herein, will be substituted in this lawsuit pursuant to Texas Rule of Civil Procedure 28 when such true name or names become known.

II.

2.1 Venue is proper in Harris County, Texas as Plaintiff is a resident of Harris County, and parties agree to venue.

III.  
FACTS

3.1 At all times material to this cause of action and prior to his termination, Plaintiff was an truck driver and employee of Defendant. On or about October 2, 2013, Plaintiff received injuries while working for the Defendant, in the course and scope of his employment. These injuries required the Plaintiff to seek medical treatment. On October 10, 2013, plaintiff was released to work, using his essential job skills, with restrictions. The Defendant advised the plaintiff that because he was on workers compensation, he could not return until he had no restriction. However, on or about December 31, 2013, Plaintiff was terminated because he sought medical attention and made a worker's compensation claim. He was advised of his termination on February 18, 2014.

IV.  
FIRST CAUSE OF ACTION

4.1 The above and foregoing acts by Defendant violated Section 451 of Texas Labor Code in that Defendant terminated and otherwise discriminated against Plaintiff for pursuing a Workers' Compensation claim and/or benefits.

4.2 As a direct result of Defendant's actions, Plaintiff has suffered damages including, but not limited to lost wages since the date of termination, up to present and will continue to suffer lost earnings in the future and has suffered lost benefits, such as health insurance, vacation pay, holiday pay, and sick leave, since termination and will continue to suffer these losses in the future, in an amount that is within the jurisdictional limits of the court and for which Plaintiff prays recovery from Defendant along with prejudgment interest.

4.3 As a direct result of Defendant's actions, Plaintiff suffered additional damages including but not limited to mental anguish for which the Plaintiff prays recovery from Defendant.

4.4 The above and foregoing acts of Defendants was intentional and malicious and part of a common plan or scheme to terminate and otherwise discriminate against those employees who file Workers' Compensation claims and as a result, Plaintiff seeks recovery of exemplary damages in an amount within the jurisdiction limits of the Court.

V.  
SECOND CAUSE OF ACTION

5.1 Incorporating the facts in the foregoing paragraphs by reference, the plaintiff petitions for relief against the Defendant Refinery Specialties, Inc. and would show the following for cause of action:

5.2 Greg Moody is a person with a disability as defined by Tex. Labor Code § 21.002(6) and in Title I of the Federal Americans with Disabilities Act of 1990, 42 U.S.C. 12102(2).

5.3 As a result of a sudden incident of back injury, the Defendant Refinery Specialties, Inc., regarded Plaintiff Greg Moody as having a physical impairment that substantially limited at least one major life activity.

5.4 Defendant Refinery Specialties, Inc., is an employer as defined in the applicable provisions of state and federal laws.

5.6 Through officers and supervisors of Defendant Refinery Specialties, Inc., the defendant classified Greg Moody in a manner that deprived plaintiff of employment opportunity and otherwise discriminated against plaintiff because of disability in connection with his compensation and other terms, conditions and privileges of employment.

5.7 At all material times, plaintiff Moody was able, with or without reasonable accommodation, to perform the duties essential duty of a truck driver for the Defendant Refinery Specialties, Inc.

5.8 Through the officers and supervisors of the Defendant Refinery Specialties, Inc, the Defendant intentionally elected to act based on ignorance and an arbitrary basis, by ignoring the certification of qualified medical personnel, that plaintiff could perform the essential job skill for his position as a truck driver.

5.9 Through officers and supervisors of Defendant Refinery Specialties, Inc., the defendant subjected plaintiff to acts of retaliation, because he opposed practices made unlawful by the cited laws a filed a worker's compensation claim related to his disability.

5.10 Through the acts and omissions of officers and supervisors of Defendant Refinery Specialties, Inc., the Defendant caused Plaintiff to suffer damages including, but not limited to lost wages since the date of termination, up to present and will continue to suffer lost earnings in the future and has suffered lost benefits, such as health insurance, vacation pay, holiday pay, and sick leave, since termination and will continue to suffer these losses in the future, in an amount that is within the jurisdictional limits of the court and for which Plaintiff prays recovery from Defendant along with prejudgment interest.

5.11 Plaintiff has, reasonably and necessarily, retained the services of Kevin A. Murray, a licensed attorney to pursue this claim on Plaintiff's behalf. Plaintiff prays that he be rewarded reasonable attorney's fees and costs of Court.

5.12 On May 15, 2014 within the time provided by the applicable laws, Plaintiff Greg Moody filed a sworn charge of discrimination with the Civil Rights Division of the Texas Workforce Commission and with the United States Equal Employment Opportunity Commission

(E.E.O.C.). (A copy of the Charge of Discrimination is attached and incorporated by reference as Exhibit "A")

5.13 On July 10, 2017, after the expiration of the requisite time set by applicable laws for the investigation of Plaintiff's claims by the said administrative organizations, the E.E.O.C. issued a Notice of Right to Sue letter (Conciliation Failure). The notice recited the following statement:

The EEOC found reasonable causes to believe that violations of the statute(s) occurred with respect to some or all of the matter alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you.

(A copy of the Notice of Right to Sue is attached and incorporated by reference as Exhibit "B")

VI.

REQUEST FOR DISCLOSURE

PLEASE PROVIDE THE FOLLOWING INFORMATION AS REQUIRED BY RULE 194.2 OF THE TEXAS RULES OF CIVIL PROCEDURE.

(1) The correct names of the parties to the lawsuit.  
ANSWER:

(2) The name, addresses, and telephone numbers of any potential parties.  
ANSWER:

(3) The legal theories and, in general, the factual bases of your claims or defenses.  
ANSWER:

(4) The amount and any method of calculating economic damage.  
ANSWER:

(5) The name, address and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.  
ANSWER:

(6) For any testifying expert:  
a. The expert's name, address and telephone number;  
b. The subject matter on which the expert will testify;  
c. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert

is not retained by, employed by, or otherwise subject to your control documents reflecting such information;

d. If the expert is retained by, employed by, or otherwise subject to your control:

1. All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

2. The expert's current resume and bibliography.

ANSWER:

(7) Any discoverable indemnity and insuring agreements.

ANSWER:

(8) Any discoverable settlement agreements.

ANSWER:

(9) Any discoverable witness statements.

ANSWER:

(10) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

ANSWER:

(11) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party.

ANSWER:

(12) The name address and telephone number of any person who may be designated as a responsible third party.

ANSWER:



PRAYER

**WHEREFORE**, Plaintiff requests that Defendant be cited to appear and that on final trial Plaintiff recover:

1. Damages for lost wages in the past, along with prejudgment interest as provided by law;
2. Damages for lost earnings in the future;
3. Damages for lost benefits, such as health insurance, vacation pay, holiday pay, and sick leave in the past and in the future;
4. Damages for mental anguish in the past and in the future;
5. Exemplary damages;
6. Attorney's fees and cost of court;
7. Post judgment interest as provided by law; and
8. Court issue mandatory and prohibitive injunction orders, in equity, as the court might find appropriate and necessary to see that Plaintiff is protected from further acts of discrimination or retaliation.
9. And such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Kevin A. Murray

Kevin A. Murray

State Bar. No. 24007720

Galleria Financial Center

5075 Westheimer Road, Suite 980

Tel. (713) 355-5500

Fax. (888) 331-5747

[kmurray@murray.com](mailto:kmurray@murray.com)

COUNSEL FOR PLAINTIFF

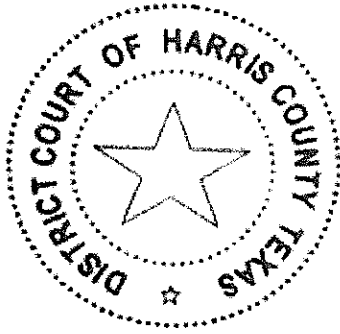
**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the following document has been duly served upon all counsel of record, in accordance with the Federal Rules of Civil Procedure:

- ☒ Electronic Notification;
- ☐ Federal Express;
- ☐ First Class Mail;
- ☐ Hand Delivery;
- ☐ Facsimile Transmittal; and/or
- ☐ Certified Mail Return Receipt Requested.

On this the 9<sup>th</sup> day of October 2017.

/s/Kevin A. Murray  
Kevin A. Murray



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 77156285

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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10/9/2017 8:26:00 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 19952896  
By: MCNEAL, ARIONNE  
Filed: 10/9/2017 8:26:00 PM

## EXHIBIT A

### MOODY EEOC CHARGE



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 77156286

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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10/9/2017 8:26:00 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 19952896  
By: MCNEAL, ARIONNE  
Filed: 10/9/2017 8:26:00 PM

## EXHIBIT B

### NOTICE OF RIGHT TO SUE

Certified Document Number: 77156287 - Page 2 of 2



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 77156287

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)



# **EXHIBIT “C”**

MOODY, GREG

vs.

REFINERY SPECIALISTS INC

Case No. 201624799

DCORX  
IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

189th JUDICIAL DISTRICT

**DOCKET CONTROL ORDER**

The following docket control order shall apply to this case unless modified by the court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. **JOINDER.** All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THIS DOCKET CONTROL ORDER AT THE TIME OF SERVICE.
2. **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6.
  - (a) 08/28/17 Experts for parties seeking affirmative relief.
  - (b) 09/27/17 All other experts.
3. **STATUS CONFERENCE.** Parties shall be prepared to discuss all aspects of the case, including ADR, with the court on this date. TIME: Failure to appear will be grounds for dismissal for want of prosecution.
4. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless changed below.
  - (a) Total hours per side for oral depositions.
  - (b) Number of interrogatories that may be served by each party on any other party.
5. **ALTERNATIVE DISPUTE RESOLUTION.**
  - (a) By this date the parties must either (1) file an agreement for ADR stating the form of ADR requested and the name of an agreed mediator, if applicable; or (2) set an objection to ADR. If no agreement or objection is filed, the court may sign an ADR order.
  - (b) 09/27/17 ADR conducted pursuant to the agreement of the parties must be completed by this date.
6. 10/27/17 **DISCOVERY PERIOD ENDS.** All discovery must be conducted before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.
7. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard by oral hearing or submission.
  - (a) 10/27/17 If subject to an interlocutory appeal, dispositive motions or pleas must be heard by this date.
  - (b) 10/27/17 Summary judgment motions not subject to an interlocutory appeal must be heard by this date.
  - (c) Rule 166a(i) motions may not be heard before this date.
8. 10/27/17 **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
9. 10/27/17 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.
10. Parties shall be prepared to discuss all aspects of trial with the court on this date. TIME: Failure to appear will be grounds for dismissal for want of prosecution.
11. 11/27/17 **TRIAL.** If not assigned by the second Friday following this date, the case will be reset.

SIGNED



TRACY GRAVES WOLF  
2100 ROSS AVE STE 2000  
DALLAS TX 75201-2719

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24004994

WILLIAM R BURKE JR  
Judge, 189TH DISTRICT COURT  
Date Generated 06/08/2017

Case No. 201624799

MOODY, GREG  
vs.  
REFINERY SPECIALISTS INC

DCORX  
IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
189th JUDICIAL DISTRICT

**DOCKET CONTROL ORDER**

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3. **STATUS CONFERENCE.** Parties shall be prepared to discuss all aspects of the case, including ADR, with the court on this date. TIME:  
Failure to appear will be grounds for dismissal for want of prosecution.
4. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless changed below:  
 (a) Total hours per side for oral depositions.  
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5. **ALTERNATIVE DISPUTE RESOLUTION.**  
 (a) By this date the parties must either (1) file an agreement for ADR stating the form of ADR requested and the name of an agreed mediator, if applicable; or (2) set an objection to ADR. If no agreement or objection is filed, the court may sign an ADR order.  
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 (a) 10/27/17 If subject to an interlocutory appeal, dispositive motions or pleas must be heard by this date.  
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9. 10/27/17 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.
10. Parties shall be prepared to discuss all aspects of trial with the court on this date.  
TIME: Failure to appear will be grounds for dismissal for want of prosecution.
11. 11/27/17 **TRIAL.** If not assigned by the second Friday following this date, the case will be reset.

SIGNED

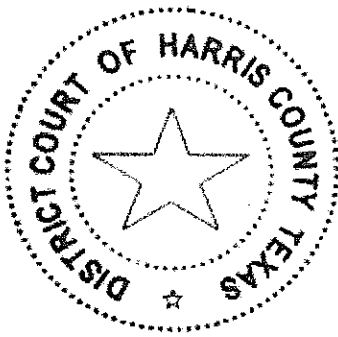


KEVIN MURRAY  
5075 WESTHEIMER RD STE 980  
HOUSTON TX 77056-6647

3

24007720

WILLIAM R BURKE JR  
Judge, 189TH DISTRICT COURT  
Date Generated 06/08/2017



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75471686

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

Exhibit "A"

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	Agency(ies) Charge No(s): 846-2014-15504
<b>Texas Workforce Commission Civil Rights Division</b> and EEOC <small>State or Local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) <b>Mr. Gregory Moody</b>		Home Phone (Ind. Area Code) (832) 421-8684	Date of Birth 02-11-1988
Street Address <b>935 Crepe Myrtle Street, College Station, TX 77845</b>		City, State and ZIP Code	
Named to the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name <b>REFINERY SPECIALTIES, INC</b>		No. Employees, Members 85 - 100	Private No. (Indicate Area Code) (979) 825-4961
Street Address <b>P.O. Box 577, 36106 FM 33646 Road, Hempstead, TX 77446</b>		City, State and ZIP Code	
Name <b>DISCRIMINATION BASED ON (Check appropriate box(es))</b>		DATE(S) DISCRIMINATION TOOK PLACE Enter: 10/10/13 2/20/14	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		<input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I was hired as a Truck Driver on November 12, 2012. On or about October 10, 2013 and continuing, I was denied a reasonable accommodation for my disability. On or about February 20, 2014, I was told that I had been discharged from my position as a truck driver effective December 31, 2013.</p> <p>Thomas Kahiden, Supervisor, denied me a reasonable accommodation, and stated that there wasn't any light duty work, and that I could not return until I was fully released from the doctor. I spoke with Mr. Kahiden a second time in October 2013, and he just reiterated that there wasn't any modified duties that I could perform. Mr. Kahiden informed me I was fired for abandonment of my job. Mr. Kahiden told me that he could not hold my position because I was injured, and that he had a company to run and that I had to be replaced.</p> <p>I believe that I have been discriminated against because of my disability, in violation of the Americans with Disabilities Act 1990, as amended. I submitted my doctor's notes concerning my disability and my need for an accommodation to Mr. Kahiden. I did not abandon my job. In fact, I attempted to return to work but Mr. Kahiden told me that I could not return until I was released by the doctor. Reasonable accommodations were available for me. However, I was discharged based on my disability.</p> <p><u>Revised Statement Attached</u></p>			
I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
Date <b>05/15/2014</b>		SIGNATURE OF COMPLAINANT <b>Gregory Moody</b>	
Charging Party Signature		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 76944264

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)

Exhibit "B"



EEOC Form 701-A (3/17/16)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE  
(CONCILIATION FAILURE)

To: Gregory Moody  
17615 Ranch Country Drive  
Hockley, TX 77447

From: Houston District Office  
Mickey Leland Building  
1916 Smith Street, 7th Floor  
Houston, TX 77002

☐ On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
645-2014-15504	Jose T. Vega, Investigator	(713) 651-4341

## TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

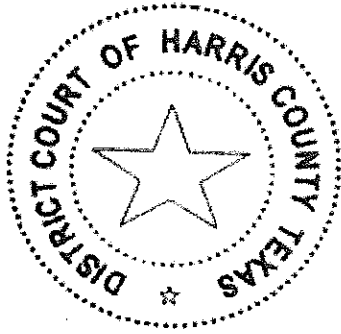
Enclosures(s)

*for: [Signature]*  
Rayford O. Irvin,  
District Director

11-10-2017  
(Date Mailed)

cc: Tamara Roberts  
Human Resources Director  
REFINERY SPECIALTIES, INC.  
P. O. Box 577  
Hempstead, TX 77445

Tracy Graves Wolf, Esq.  
Lewis Brisbois  
2100 Ross Avenue, Suite 2000  
Dallas, Texas 75201



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 76944265

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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MOODY, GREG

vs.

REFINERY SPECIALISTS INC

Case No. 201624799

\*  
\*  
\*  
\*  
\*

DCORX  
IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
189th JUDICIAL DISTRICT

**DOCKET CONTROL ORDER**

The following docket control order shall apply to this case unless modified by the court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. **12/13/16 JOINDER.** All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THIS DOCKET CONTROL ORDER AT THE TIME OF SERVICE.
2. **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6.
  - (a) **03/13/17** Experts for parties seeking affirmative relief.
  - (b) **04/12/17** All other experts.
3. **STATUS CONFERENCE.** Parties shall be prepared to discuss all aspects of the case, including ADR, with the court on this date. TIME: Failure to appear will be grounds for dismissal for want of prosecution.
4. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless changed below:
  - (a) Total hours per side for oral depositions.
  - (b) Number of interrogatories that may be served by each party on any other party.
5. **ALTERNATIVE DISPUTE RESOLUTION.**
  - (a) By this date the parties must either (1) file an agreement for ADR stating the form of ADR requested and the name of an agreed mediator, if applicable; or (2) set an objection to ADR. If no agreement or objection is filed, the court may sign an ADR order.
  - (b) **04/12/17** ADR conducted pursuant to the agreement of the parties must be completed by this date.
6. **05/12/17 DISCOVERY PERIOD ENDS.** All discovery must be conducted before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.
7. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard by oral hearing or submission.
  - (a) **05/12/17** If subject to an interlocutory appeal, dispositive motions or pleas must be heard by this date.
  - (b) **05/12/17** Summary judgment motions not subject to an interlocutory appeal must be heard by this date.
  - (c) Rule 166a(i) motions may not be heard before this date.
8. **05/12/17 CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
9. **05/12/17 PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.
10. Parties shall be prepared to discuss all aspects of trial with the court on this date. TIME: Failure to appear will be grounds for dismissal for want of prosecution.
11. **06/12/17 TRIAL.** If not assigned by the second Friday following this date, the case will be reset.

SIGNED

KEVIN MURRAY  
1776 YORKTOWN ST STE 350  
HOUSTON TX 77056-4161

24007720

WILLIAM R BURKE JR  
Judge, 189TH DISTRICT COURT  
Date Generated 07/08/2016

MOODY, GREG

vs.

REFINERY SPECIALISTS INC

Case No. 201624799

\*  
\*  
\*  
\*  
\*DCORX  
IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

189th JUDICIAL DISTRICT

**DOCKET CONTROL ORDER**

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  - (a) Total hours per side for oral depositions.
  - (b) Number of interrogatories that may be served by each party on any other party.
5. **ALTERNATIVE DISPUTE RESOLUTION.**
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  - (a) **05/12/17** If subject to an interlocutory appeal, dispositive motions or pleas must be heard by this date.
  - (b) **05/12/17** Summary judgment motions not subject to an interlocutory appeal must be heard by this date.
  - (c) Rule 166a(i) motions may not be heard before this date.
8. **05/12/17 CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
9. **05/12/17 PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.
10. Parties shall be prepared to discuss all aspects of trial with the court on this date. TIME: Failure to appear will be grounds for dismissal for want of prosecution.
11. **06/12/17 TRIAL.** If not assigned by the second Friday following this date, the case will be reset.

SIGNED



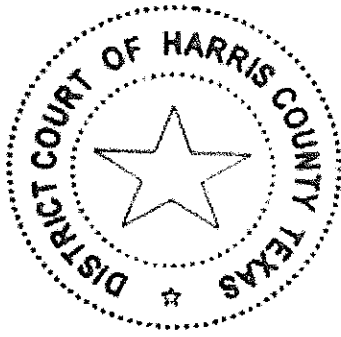
TRACY GRAVES WOLF  
2100 ROSS AVE STE 2000  
DALLAS TX 75201-2719

9

24004994

WILLIAM R BURKE JR  
Judge, 189TH DISTRICT COURT  
Date Generated 07/08/2016

ICV002  
rev 11/202006



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 71060738

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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6/7/2017 3:38:48 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 17482561  
By: MCNEAL, ARIONNE  
Filed: 6/7/2017 3:38:48 PM

Pgs-1

CAUSE NO. 2016-24799

GREG MOODY,  
Plaintiff,

§

IN THE DISTRICT COURT

§

§

v.

§

HARRIS COUNTY, TEXAS

§

REFINERY SPECIALTIES, INC.,  
Defendant.

§

§

189<sup>th</sup> DISTRICT COURT

CAFX

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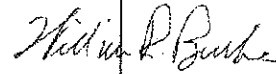
ORDER GRANTING UNOPPOSED MOTION FOR CONTINUANCE

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On \_\_\_\_\_ came to be considered Plaintiff's Unopposed Motion for Continuance, having reviewed the Motion, finds that there is sufficient cause for this order to be issued.

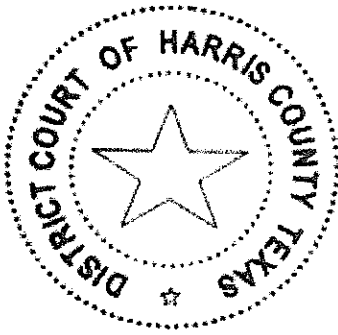
It is therefore, ORDERED that said Motion be, and the same hereby, GRANTED.

Signed:  
6/7/2017



PRESIDING JUDGE

ORDER - SOLO PAGE



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75425215

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS


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# **EXHIBIT “D”**



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**Case: 201624799 - 7**















Court: 189 File Dt: 4/19/2016 Case Status: Ready Docket  
Case Type: Retaliation Type of Action: Retaliation  
Style: MOODY, GREG vs REFINERY SPECIALISTS INC

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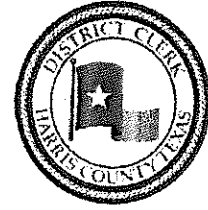
Image Number	Pages	Activity Type	Activity Date	PJN	Party
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<input checked="" type="checkbox"/> <u>76944265</u>  <u>19952896</u>	2	Exhibit B	10/9/2017		<a href="#">Enter Revision</a> <a href="#">Add To Basket</a>
<input checked="" type="checkbox"/> <u>77156285</u>  <u>19952896</u>	7	Plaintiff's first amended petition	10/9/2017		<a href="#">Enter Revision</a> <a href="#">Add To Basket</a>
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<input checked="" type="checkbox"/> <u>75415616</u>  <u>17482561</u>	3	unopposed motion for continuance	6/7/2017		<a href="#">Enter Revision</a> <a href="#">Add To Basket</a>
<input checked="" type="checkbox"/> <u>75415617</u> <u>17482561</u>	1	Sub Doc: PROPOSED ORDER GRANTING MOTION FOR CONTINUANCE	6/7/2017		<a href="#">Enter Revision</a> <a href="#">Add To Basket</a>
<input checked="" type="checkbox"/> <u>75425215</u>	1	CAFX - ORDER SIGNED GRANTING TRIAL CONTINUANCE	6/7/2017		<a href="#">Enter Revision</a> <a href="#">Add To Basket</a>
<input checked="" type="checkbox"/> <u>75380623</u>  <u>17433412</u>	8	Plaintiff Greg Moodys Response to Defendants Motion for No Evidence for Summary Judgment	6/5/2017		<a href="#">Enter Revision</a> <a href="#">Add To Basket</a>
<input checked="" type="checkbox"/> <u>75380624</u>  <u>17433412</u>	4	Sub Doc: Exhibit A	6/5/2017		<a href="#">Enter Revision</a> <a href="#">Add To Basket</a>
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<input checked="" type="checkbox"/>	<a href="#">75380627</a> <a href="#">17433412</a>		2	Sub Doc: Exhibit D	6/5/2017	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
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<input checked="" type="checkbox"/>	<a href="#">75185649</a> <a href="#">17162545</a>		5	Defendant Refinery Specialties Inc's Motion for No-Evidence Summary Judgment	5/22/2017	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
<input checked="" type="checkbox"/>	<a href="#">75205256</a> <a href="#">17188422</a>		2	Sub Doc: Notice of submission on defendant refinery specialties Inc.'s motion for no-evidence summary judgment	5/23/2017	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
<input checked="" type="checkbox"/>	<a href="#">75185650</a> <a href="#">17162545</a>		1	Sub Doc: Proposed Order	5/22/2017	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
<input checked="" type="checkbox"/>	<a href="#">71060738</a>		2	DOCKET CONTROL ORDER	7/14/2016	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
<input checked="" type="checkbox"/>	<a href="#">70863333</a> <a href="#">11375534</a>		2	Defendants Refinery Specialties Inc's Certificate	6/28/2016	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
<input checked="" type="checkbox"/>	<a href="#">70413560</a> <a href="#">10829758</a>		4	Defendant's Refinery Specialties Inc.'s Original Answer and Affirmative Defenses	5/25/2016	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
<input checked="" type="checkbox"/>	<a href="#">69866759</a> <a href="#">10199620</a>		5	Plaintiff's Original Petition	4/19/2016	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>
<input checked="" type="checkbox"/>	<a href="#">69866760</a> <a href="#">10199620</a>		1	Sub Doc: Civil Process Request	4/19/2016	<a href="#">Enter Revision</a>	<a href="#">Add To Basket</a>

## Harris County Docket Sheet

**2016-24799****COURT:** 189th**FILED DATE:** 4/19/2016**CASE TYPE:** Retaliation**MOODY, GREG**

Attorney: MURRAY, KEVIN ALBERT

**VS.****REFINERY SPECIALISTS INC**

Attorney: WOLF, TRACY GRAVES

**Trial Settings**

<b>Date</b>	<b>Comment</b>
6/12/2017	Docket Set For: Trial Setting
11/27/2017	Docket Set For: Trial Setting

**Docket Sheet Entries**

<b>Date</b>	<b>Comment</b>
6/7/2017	CAFX - ORDER SIGNED GRANTING TRIAL CONTINUANCE

# **EXHIBIT “E”**

**CAUSE NO. 2016-24799**

<b>GREG MOODY,</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
	<b>§</b>	
<b>Plaintiff,</b>	<b>§</b>	
	<b>§</b>	
<b>v.</b>	<b>§</b>	<b>HARRIS COUNTY, TEXAS</b>
	<b>§</b>	
<b>REFINERY SPECIALTIES INC.,</b>	<b>§</b>	
	<b>§</b>	
<b>Defendant.</b>	<b>§</b>	<b>189<sup>th</sup> JUDICIAL DISTRICT</b>

---

**LIST OF ALL COUNSEL OF RECORD**

---

Kevin Murray  
Galleria Financial Center  
5075 Westheimer Road, Suite 980  
Houston, Texas 77056  
[kmurray@murrllaw.com](mailto:kmurray@murrllaw.com)  
ATTORNEY FOR  
PLAINTIFF GREG MOODY

Tracy Graves Wolf  
2100 Ross Ave., Suite 2000  
Dallas, Texas 75201  
Phone: (214) 347-4508  
Fax: (972) 638-8664  
ATTORNEY FOR DEFENDANT  
REFINERY SPECIALTIES INC.

# **EXHIBIT “F”**

1

## CIVIL PROCESS REQUEST FORM

4/19/2016 8:41:39 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 10199620

2016-24799 / Court: 189

FOR EACH PARTY TO BE SERVED YOU MUST FURNISH TWO (2) COPIES OF THE PLEADING TO BE SERVED.  
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED.

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Original Petition \_\_\_\_\_

FILE DATE OF MOTION: Tuesday, April 19, 2016 \_\_\_\_\_  
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME REFINERY SPECIALISTS INC. \_\_\_\_\_

ADDRESS 38106 Highway 3346, Hempstead, Texas 77445 \_\_\_\_\_

AGENT, (if applicable): Mickey D. Tucker \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE  
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: \_\_\_\_\_ Phone: \_\_\_\_\_  
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ATTENTION: Effective June 1, 2010

For all Services Provided by the DISTRICT CLERKS OFFICE requiring our office to MAIL something back to the Requesting Party, we require that the Requesting Party provide a Self-Addressed Stamped Envelope with sufficient postage for mail back. Thanks you,

2. NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE  
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Type of Publication: ☐ COURTHOUSE DOOR, or  
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☐ OTHER, explain \_\_\_\_\_

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

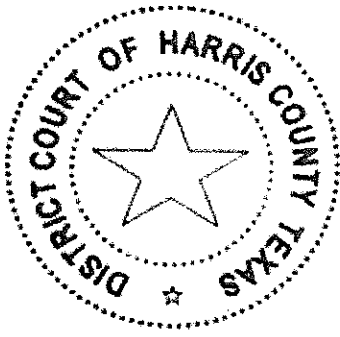
NAME: Kevin Murray \_\_\_\_\_ TEXAS BAR NO./ID NO. 24007720 \_\_\_\_\_

MAILING ADDRESS: 1776 Yorktown, Suite 350, Houston, Texas 77056 \_\_\_\_\_

PHONE NUMBER: 713.355.5500 \_\_\_\_\_ FAX NUMBER: 713.212.0290 \_\_\_\_\_  
area code phone number area code fax number

EMAIL ADDRESS: kmurray@murrllaw.com \_\_\_\_\_





I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 69866760

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

2

CAUSE NO. 2016-24799

GREG MOODY,

## Plaintiff,

REFINERY SPECIALTIES INC.,

**Defendant.**

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

189<sup>th</sup> JUDICIAL DISTRICT

**DEFENDANT REFINERY SPECIALTIES INC.'S  
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Refinery Specialties Inc. (hereinafter referred to as "RSI" or "Defendant"), Defendant herein, files this its Original Answer and Affirmative Defenses, and states as follows:

**L**

**ORIGINAL ANSWER**

## General Denial

Pursuant to Texas Rule of Civil Procedure 92, Defendant herein enters its general denial to all of the material allegations contained in Plaintiff's Original Petition, and demands strict proof thereof by the appropriate evidentiary standard.

19

### AFFIRMATIVE DEFENSES AND SPECIFIC DENIALS

Defendant alleges the following specific denials and affirmative defenses to all of the material allegations contained in Plaintiff's Petition:

1. Defendant alleges Plaintiff's Petition fails to state a claim upon which relief may be granted.
2. For further answer, if such is necessary, Defendant denies that all conditions precedent have been performed by Plaintiff or have otherwise occurred.
3. For further answer, if such be necessary, Defendant denies that Plaintiff sustained any injuries or damages as a result of any conduct of Defendant, if any.
4. For further answer, if such be necessary, Defendant alleges that Plaintiff should have taken action to minimize or eliminate any loss, injury or damage, and, to such extent, Plaintiff is precluded from recovering damages or Plaintiff's damages should be reduced by operation of the doctrine of avoidable consequences and/or mitigation of damages.
5. By way of affirmative defense, Defendant asserts the limitation of damages contained in Chapter 41 of the Texas Civil Practice & Remedies Code, including 41.007, and 41.008.
6. In the alternative, and only in the event that Plaintiff is successful in submitting a claim for punitive/exemplary damages, Defendant is entitled to insist upon a burden of proof by clear and convincing evidence. TEX. CIV. PRAC. & REM. CODE § 41.003.
7. Defendant further reserves the right to replead any other affirmative defenses or special denials which later pleadings of the Plaintiff, changes in the law, and/or subsequent discovery may reveal to be appropriate.

### III.

#### JURY DEMAND

Defendant hereby demands a jury trial on all issues.

IV.

**REQUEST FOR DISCLOSURE**

Pursuant to Texas Rules of Civil Procedure 194, Defendant requests that Plaintiff disclose within thirty (30) days of service of this request, the information set forth in 194.2(a) -- (f).

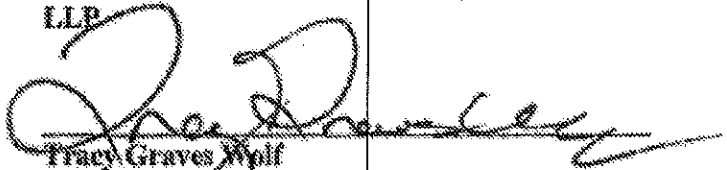
V.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant Refinery Specialties Inc. hereby prays that Plaintiff take nothing by way of his suit, that it have judgment for its costs in this proceeding, and that this Court grant it such other and further relief, as it may show itself justly entitled to receive, including the submission of all proper jury issues to the trier of fact.

Respectfully submitted,

**LEWIS, BRISBOIS, BISGAARD, & SMITH,  
LLP**

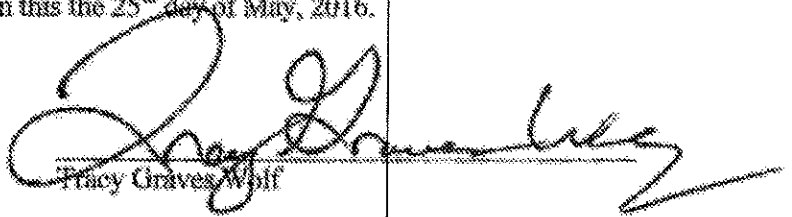


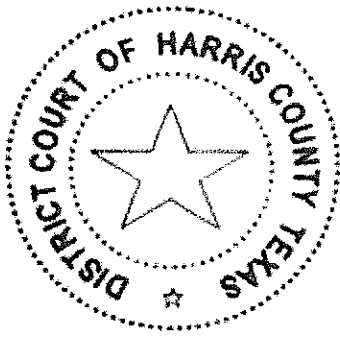
Tracy Graves Wolf  
Texas Bar No. 24004994  
2100 Ross Avenue, Suite 2000  
Dallas, TX 75201  
Phone: (214) 347-4508  
Fax: (972) 638-8664  
[Tracy.Wolf@LewisBrisbois.com](mailto:Tracy.Wolf@LewisBrisbois.com)

**ATTORNEYS FOR REFINERY SPECIALTIES  
INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record via Electronic filing on this the 25<sup>th</sup> day of May, 2016.

  
Tracy Graves Wolf



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 70413560

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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3



6/28/2016 1:57:50 PM  
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By: Deandra Mosley  
Filed: 6/28/2016 1:57:50 PM

CAUSE NO. 2016-24799

GREG MOODY,  
*Plaintiff,*

v.

REFINERY SPECIALTIES INC.,  
*Defendant.*

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

189<sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANT REFINERY SPECIALTIES INC.'S  
CERTIFICATE OF WRITTEN DISCOVERY**

Defendant Refinery Specialties Inc. certifies that the following document was served upon all counsel of record in compliance with the Texas Rules of Civil Procedure:

1. Defendant Refinery Specialties Inc.'s Responses to Plaintiff's Request for Disclosure.

Respectfully submitted,

LEWIS, BRISBOIS, BISGAARD, & SMITH,  
LLP

*/s/Tracy Graves Wolf*

---

Tracy Graves Wolf  
Texas Bar No. 24004994  
Samantha L. Halpern  
State Bar No. 24099838  
2100 Ross Ave., Suite 2000  
Dallas, Texas 75201  
Phone: (214) 347-4508  
Fax: (972) 638-8664  
[Tracy.Wolf@LewisBrisbois.com](mailto:Tracy.Wolf@LewisBrisbois.com)  
[Samantha.Halpern@LewisBrisbois.com](mailto:Samantha.Halpern@LewisBrisbois.com)

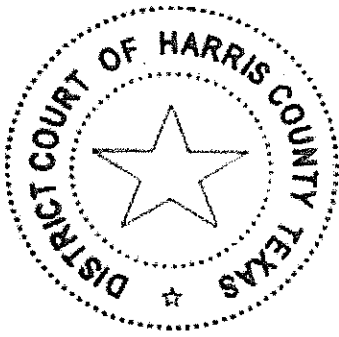
ATTORNEYS FOR DEFENDANT  
REFINERY SPECIALTIES INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record on this the 28<sup>th</sup> day of June, 2016.

*/s/Tracy Graves Wolf*

Tracy Graves Wolf



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 70863333

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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4

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Chris Daniel - District Clerk Harris County  
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By: ARIONNE MCNEAL  
Filed: 5/23/2017 9:58:56 AM

**CAUSE NO. 2016-24799**

<b>GREG MOODY,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>REFINERY SPECIALTIES INC.,</b>	§	
	§	
<b>Defendant.</b>	§	<b>189<sup>th</sup> JUDICIAL DISTRICT</b>

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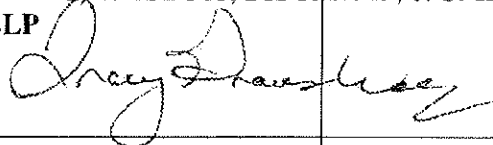
**NOTICE OF SUBMISSION  
ON DEFENDANT REFINERY SPECIALTIES INC.'S  
MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT**

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Defendant Refinery Specialties Inc.'s Motion for No -Evidence Summary Judgment has been filed and will be submitted to the Court for consideration without a hearing on **June 12, 2017 at 8:00 am.**

Respectfully submitted,

**LEWIS, BRISBOIS, BISGAARD, & SMITH,  
LLP**



---

**Tracy Graves Wolf**  
Texas Bar No. 24004994  
2100 Ross Avenue, Suite 2000  
Dallas, TX 75201  
Phone: (214) 347-4508  
Fax: (972) 638-8664  
[Tracy.Wolf@LewisBrisbois.com](mailto:Tracy.Wolf@LewisBrisbois.com)

**ATTORNEYS FOR DEFENDANT  
REFINERY SPECIALTIES INC.**

4819-5865-7609.1


**NOTICE OF SUBMISSION ON DEFENDANT REFINERY SPECIALISTS INC.'S  
MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT**

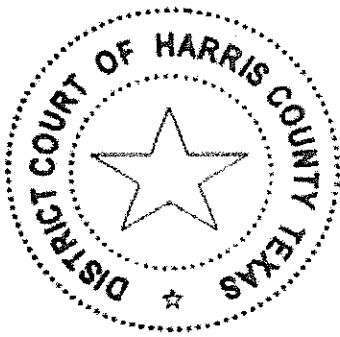
**PAGE 1**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record via Electronic filing on this the 23rd day of May, 2017.

Kevin Murray  
1776 Yorktown Street  
Suite 600  
Houston TX 77056  
[kmurray@murrlaw.com](mailto:kmurray@murrlaw.com)

  
Tracy Grayes Wolf



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75205256

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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5



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By: Deandra Mosley  
Filed: 5/22/2017 10:37:04 AM

**CAUSE NO. 2016-24799**

<b>GREG MOODY,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>REFINERY SPECIALTIES INC.,</b>	§	
	§	
<b>Defendant.</b>	§	<b>189<sup>th</sup> JUDICIAL DISTRICT</b>

---

**DEFENDANT REFINERY SPECIALTIES INC.'S  
MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT**

---

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Refinery Specialties, Inc. ("RSI"), pursuant to Texas Rule of Civil Procedure 166a(i), moves this Court for Summary Judgment as to all claims asserted by Greg Moody ("Plaintiff") and would respectfully show this Court the following:

Pursuant to Rule 166a(i) of the Texas Rules of Civil Procedure, Defendant is entitled to a "no-evidence" summary judgment because Plaintiff can present no evidence that he was terminated for seeking medical attention after allegedly suffering injuries in the course and scope of his employment in violation of Section 451 of the Texas Labor Code. Further, Plaintiff can present no evidence that he was terminated or discriminated against for pursuing a worker's compensation claim. Thus, RSI is entitled to judgment as a matter of law.

**I. NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT**

**A. Background**

Plaintiff, a former employee of RSI, alleges that he was terminated from his position, truck driver, in retaliation for filing an on-the-job/worker's compensation injury claim on or about October 2, 2013. Plaintiff took an extended leave from his position, and did not communicate with RSI again until February 2014. Plaintiff's employment with RSI was terminated on December 31, 2013 for

4817-8581-0761.1

failure to report to work or check in with his supervisor. Plaintiff can provide no evidence that the termination of his employment was based on anything other than his complete failure to report in to his employer and provide a doctor's release to return to work, thus abandoning his job.

**B. No Evidence Motion for Summary Judgment Standard**

Summary judgment is proper under Rule 166a(i) when a party fails to produce legally sufficient evidence regarding one or more elements of its claims. *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998). Under Rule 166a(i), upon a motion specifically stating the elements as to which there is no evidence, the burden shifts to the non-movant to produce evidence raising a fact issue on the challenged elements. *Greathouse v. Alvin Indep. Sch. Dist.*, 17 S.W.3d 419, 423 (Tex.App. – Houston [1<sup>st</sup> Dist.] 2000, no pet.); *Harrill v. A.J.'s Wrecker Serv., Inc.*, 27 S.W.3d 191, 193 (Tex.App. – Dallas 2000, dismissed w.o.j.). The party opposing a no-evidence motion for summary judgment may not rest upon the allegations of its pleadings; the party must present evidence that raises a fact issue on the challenged elements. *See King v. Texas Dept. of Human Serv. ex rel. Bost*, 28 S.W.3d 27, 34 (Tex.App. – Austin 2000, no pet.). The court must grant the motion unless respondent produces summary judgment evidence raising a genuine issue of material fact. *Lampasas v. Spring Center, Inc.*, 988 S.W.2d 428, 432 (Tex.App. – Houston [14<sup>th</sup> Dist.] 1999, no pet.).

**C. Adequate Time for Discovery Has Passed**

A no-evidence motion for summary judgment may be filed after there has been adequate time for discovery. *Specialty Retailers, Inc. v. Fuqua*, 29 S.W.3d 140, 145 (Tex.App. – Houston [14<sup>th</sup> Dist.] 2000, pet. denied). There is no requirement that discovery be completed. *Dishner v. Huitt-Zollars, Inc.*, 162 S.W.3d 370, 376 (Tex.App. – Dallas 2005, no pet.); *Fuqua*, 29 S.W.3d at 145. The deadline for completing discovery in this case has passed and trial is set for June 12, 2017.

Plaintiff has had more than adequate time to develop his claims against RSI, and therefore, the filing of summary judgment is proper.

**D. Plaintiff's Texas Labor Code Claim is Not Supported by Evidence.**

In Plaintiff's Original Petition, Plaintiff alleges that Texas Labor Code § 451.001 prohibits discrimination against employees and provides that a person may not discharge or in any manner discriminate against an employee because the employee has:

- (1) filed a worker's compensation claim in good faith;
- (2) hired a lawyer to represent the employee in a claim;
- (3) instituted or caused to be instituted in good faith a proceeding under Subtitle A; or
- (4) testified or is about to testify in a proceeding under Subtitle A.

Texas Labor Code §§ 451.001.

To prevail on a § 451 claim, an employee must show that "but for" the filing of the claim, the discharge would not have occurred when it did. *Vallance v. Irving C.A.R.E.S., Inc.*, 14 S.W.3d 833, 837 (Tex. App.—Dallas 2000) (citing *Continental Coffee Prods. Co. v. Cazarez*, 937 S.W.2d 444, 450-51 n.3 (Tex. 1996), see also, *City of Fort Worth v. Zimlich*, 29 S.W.3d 62, 67 (Tex. 2000)). An employee's subjective belief alone is insufficient to support the casual connection required for a worker's compensation retaliation claim. *The Housing Authority of the City of El Paso v. Guerra*, 963 S.W.2d 946, 950 (Tex. App.—El Paso 1998); see also, *Tex. Division-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312, 314 (Tex. 1994).

If Plaintiff meets this burden, which Plaintiff clearly cannot do in this instance, the burden shifts to the employer, RSI, to show that the employee was discharged for a legitimate reason. Plaintiff in this lawsuit abandoned his employment for over two months without returning phone calls or reporting on the status of his recovery. After the employer provides a legitimate reason for the termination of the employment, Plaintiff has the burden to rebut the legitimate reason provided

with controverting evidence of a retaliatory motive. *McIntyre v. Lockheed Corp.*, 970 S.W.2d 695, 697 (Tex. App.—Fort Worth 1998, no pet.). Plaintiff cannot meet his initial burden, so the inquiry into the legitimate reason for Plaintiff's termination is never reached.

### III. CONCLUSION

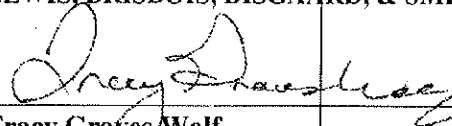
Plaintiff's claims against RSI must fail because he can offer no evidence of worker's compensation retaliation in violation of the § 451 of the Texas Labor Code, or any sort of discrimination.

### IV. PRAYER

WHEREFORE, PREMISES CONSIDERED. Defendant prays that this Honorable Court will grant its Motion for No-Evidence Summary Judgment. Additionally, Defendant respectfully requests that this court grant it such other and further relief, in law or in equity, to which it may have shown themselves justly entitled.

Respectfully submitted,

LEWIS, BRISBOIS, BISGAARD, & SMITH, LLP

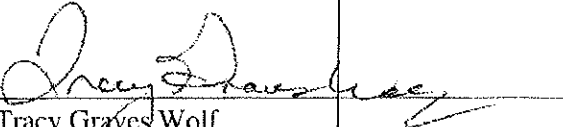


**Tracy Graves-Wolf**  
Texas Bar No. 24004994  
2100 Ross Avenue, Suite 2000  
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Phone: (214) 347-4508  
Fax: (972) 638-8664  
[Tracy.Wolf@LewisBrisbois.com](mailto:Tracy.Wolf@LewisBrisbois.com)

**ATTORNEYS FOR DEFENDANT  
REFINERY SPECIALTIES INC.**

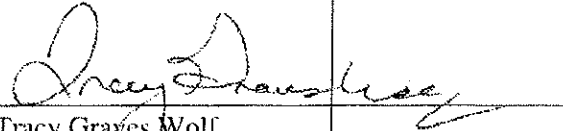
**CERTIFICATE OF CONFERENCE**

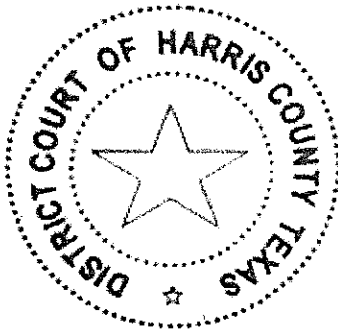
I, Tracy Graves Wolf, made several attempts to contact Plaintiff's counsel regarding this Motion.  
At the time of filing, Plaintiff's counsel had not returned my calls or responded to my emails.

  
Tracy Graves Wolf

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all  
counsel of record via Electronic filing on this the 22nd day of May, 2017.

  
Tracy Graves Wolf



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75185649

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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6

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 By: ARIONNE MCNEAL  
 Filed: 6/5/2017 6:25:59 PM

## CAUSE NO. 2016-24799

GREG MOODY,  
 Plaintiff,

§ IN THE DISTRICT COURT

§

§

v.

§

HARRIS COUNTY, TEXAS

§

REFINERY SPECIALTIES, INC.,  
 Defendant.

§

§

189<sup>th</sup> DISTRICT COURT

---

PLAINTIFF GREG MOODY'S RESPONSE TO DEFENDANTS MOTION FOR  
 NO-EVIDENCE SUMMARY JUDGMENT

---

TO THE HONORABLE COURT:

Greg Moody, Plaintiff, files this response to the "no-evidence" motion for summary judgment of Defendant, Refinery Specialties, Inc., and shows the Court as follows:

**Introduction**

1. At all times material to this cause of action and prior to his termination, Plaintiff was an employee of Defendant, Refinery Specialties, Inc., as a truck driver. On or about October 2, 2013 Plaintiff suffered a lower back injury, in the performance of his duties for Defendant. These injuries required the Plaintiff to seek medical treatment and prevented him from working. Soon after Plaintiff sought medical treatment and filed a workers' compensation claim he was notified that he no longer was employed by the Defendant.

**Facts**

2. Plaintiff was hired by Defendant Refinery Specialties, Inc., as a truck driver on November 12, 2012. (a true and correct copy of the declaration of Greg Moody is attached and incorporated by reference as Exhibit "A") Plaintiff earned more than \$73,000.00 for the year

PLAINTIFF GREG MOODY'S RESPONSE TO DEFENDANTS MOTION FOR

Page 1



2013, at the time of my injury. (a true and correct copy of my 2013 W-2 Wage and Tax Statement, is attached and incorporated by reference as Exhibit "B")

3. On October 2, 2013, Plaintiff suffered a lower back injury in the performance of his duties for the Defendant. The company arranged for Plaintiff to be taken to Dimmit Regional Hospital. The Company safety director, George, came to the hospital. After Plaintiff was released he was transported to his home in College Station, Texas. Plaintiff underwent a MRI at the College Station Medical Center on October 5, 2013 (a true and correct copy of the MRI report is attached and incorporated by reference as Exhibit "C")

4. Plaintiff notified the company on the date of injury, and he was placed on workers' compensation leave on October 4, 2013. Plaintiff spoke with various company representatives, including the owner on October 3, 2013 immediately after the injury. He also spoke to the owner after he received a return to work with restrictions from Dr. P. Mark Glencross (a true and correct copy of the October 22, 2013 Texas Workers Compensation Work Status Report is attached and incorporated by reference as Exhibit "D") Plaintiff was physically present to receive the fax confirmation, from Dr. Glencross' office, that the October 22, 2013, Texas Workers Compensation Work Status Report had been sent to Defendant.

5. On or about October 24, 2013, Plaintiff called Thomas Kahlden, Plaintiff was then informed that there was no light duty, and he could only return to work if he had a full release to work. During Plaintiff's entire employment with Defendant, he was never given or made aware of any written, published requirement to call the owner of the business, while on workers' compensation. During the period of October 3, 2013 to December 31, 2013, Plaintiff was in contact with his supervisor, the safety director, the owner, and the office manager, Tamara Roberts.

PLAINTIFF GREG MOODY'S RESPONSE TO DEFENDANT'S MOTION FOR

6. On February 19, 2014, Plaintiff armed with an authorization to return to work with restrictions, per the February 18, 2014 Texas Workers Compensation Work Status Report (a true and correct copy of the February 18, 2014 Texas Workers Compensation Work Status Report is attached and incorporated by reference as Exhibit "E") Plaintiff contacted the office manager, the owner came on the phone informed Plaintiff that he had been terminated for job abandonment on December 31, 2013. A letter dated February 20, 2014 was sent to Plaintiff stating that this "failure to meet a requirement to check in with the owner as his supervisor between October 2013 and December 31, 2013 was job abandonment". (a true and correct copy of the letter is attached in incorporated by reference as Exhibit "F").

7. The February 18, 2014, Texas Workers' Compensation Work Status Report was the clinical recovery plateau and made the foundation for the designated doctor, Glencross to issue a MMI on March 21, 2014. (a true and correct copy of Dr. Glencross' report is attached and incorporated by reference as Exhibit "F").

8. Plaintiff was terminated because he filed a claim and was awaiting a proceeding for MMI/IR as a result of the February 18, 2014 Texas Workers' Compensation Work Status Report. The owner acted negatively toward Plaintiff on February 19, 2014 stating that "he could not hold his job because he had a business to run" and "didn't know when Plaintiff would return." The actions of the Defendant so shocked the Plaintiff he made notes of Defendant's comments immediately after the call. (a true and correct copy of the note is attached and incorporated by reference as Exhibit "G").

9. Plaintiff was terminated retroactively due to his pending MMI proceeding with a designated physician. Plaintiff did not abandon his job and was in constant contact by Texas Workers Compensation Work Status Reports with the company. Plaintiff was never made aware

PLAINTIFF GREG MOODY'S RESPONSE TO DEFENDANT'S MOTION FOR

of any duty to report and check in with the owner as his "supervisor" between October 2013 and December 31, 2013. Plaintiff stayed in constant contact with the company and discussed his status with the owner during the period between October 2013 and December 31, 2013. The owner gave the parameters to return to work in October of 2013, and never discussed any reporting requirements outside of complying with the medical directives and submitting Worker's Compensation Status Reports. Plaintiff was a first-time workers compensation claimant, at Defendant's operations, Plaintiff was never given any written published instruction regarding contact requirements; nor did Plaintiff see any other worker, on workers compensation, be required to stay in contact with the owner of a company of several hundred employees.

#### Arguments & Authorities

10. In the context of a summary judgment the court must examine the judgment record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion. *Yancy v. United Surgical Partners Int'l, Inc.*, 236 S.W.3d 778, 782 (Tex.2007). For a party to prevail on a motion for summary judgment it must conclusively establish an absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P 166a(c). A genuine issue of material fact is raised if the nonmovant produces more than a scintilla of evidence regarding the challenged element. *King Ranch, Inc., v Chapman*, 118 S.W.3d 742, 750 (Tex. 2003). The Plaintiff produces more than a scintilla of evidence when the evidence "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions". *Id.* The Plaintiff produced more than a scintilla of evidence regarding filing his Original Petition and subsequent amendments to satisfy the statute of limitations. Defendant would suffer no prejudice—all witnesses, medical providers, and the investigating officer are available; further Plaintiff has meritorious claims against

PLAINTIFF GREG MOODY'S RESPONSE TO DEFENDANT'S MOTION FOR

Defendant.

11. More than a scintilla of evidence exists when the evidence supporting the findings, as a whole, rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997). If more than a scintilla of evidence exists, it is legally sufficient. *Browning-Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 928 (Tex. 1993). More than a scintilla of evidence exists if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about a vital fact's existence. *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983).

12. The Texas Workers' Compensation Act provides that a person may not discharge or in any manner discriminate against an employee because the employee has (1) filed a workers' compensation claim in good faith; (2) hired a lawyer to represent the employee in a claim; (3) instituted or caused to be instituted a workers' compensation proceeding in good faith; or (4) testified or is about to testify in such a proceeding. Tex. Lab. Code § 451.00. *Armendariz v. Redcats USA, L.P.*, 300S.W.3d 463, 467-468 (TEx.App.-El Paso 2012, no pet. h.)

13. Further, an employee who is fired after making a claim is entitled to protection of the statute if there is evidence of causation. *Mid-South Bottling Co., v Cigainero*, 799 S.W.2d 385, 389 (Tex. App.—Texarkana 1990, writ denied). Causation can be proven by temporal proximity between the protected conduct and the [Hertz Equipment Rental Corp. v. Barousse 365 S.W.3d 46, 56 (Tex. App.—Houston [1st Dist.] 2011, pet. denied) adverse action also may constitute circumstantial evidence of a causal link, 365 S.W.3d 46, 56 (Tex. App.—Houston [1st Dist.] 2011, pet. denied); *Parker v. Valerus Compression Services, LP*, 365 S.W.3d 61, 67 (Tex. App.—Houston [1st Dist.] 2011, pet. denied)].

14. In the case at bar, Defendant Refinery Specialties, Inc. contends that the Plaintiff's claims have no evidentiary support. However, evidence exists to all elements of Plaintiff's claims to at least raise a genuine issue of material fact as to Plaintiff's claim that but for the filing of the claim and the coming proceeding on MMI/IR, Plaintiff would not have been discharged.

15. More specifically, Plaintiff was an employee of Defendant, and was injured on the job on October 2, 2013. Plaintiff filed a claim in good faith. Plaintiff went on workers compensation leave on October 4, 2013. The Plaintiff caused or instituted a MMI (Maximum Medical Improvement) proceeding; after the February 18, 2014 Texas Workers Compensation Work Status Report.

16. The Plaintiff watched as the designated doctor, Dr. P. Mark Glencross' staff sent a copy of the Texas Workers Compensation Work Status Report by fax to the company at the end of each evaluation visit. The company had notice that Plaintiff was still awaiting clearance, and a pretextual reason for termination was given.

17. On February 19, 2014, the day after receipt of the February 18, 2014 Texas Workers Compensation Work Status Report, the employer informed the Plaintiff that he had been terminated, because he couldn't hold the job for him and not know when he was able to return to full work status and that "he had a business to run". A termination letter was sent on February 20, 2014 stating for the first time that there was "a requirement" to check in with the supervisor /owner. There was no written published notice of a requirement to check in with the owner of a company with several hundred workers.

18. Circumstantial evidence that may establish the casual link includes knowledge of the compensation claim by the person making the discharge decision; expression of a negative

PLAINTIFF GREG MOODY'S RESPONSE TO DEFENDANT'S MOTION FOR

attitude towards the employee's injured condition. [*Hertz Equipment Rental Corp. v. Barousse*, 365 S.W.3d 46, 54 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2011, pet. denied); *Parker v. Valerus Compression Services, LP*, 365 S.W.3d 61, 67 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2011, pet. denied)]. The letter stated that the mysterious policy, that was failure to adhere to establish company policies and was a discriminatory treatment of the employee in comparison to other similarly situated employees; had been invoked, and the termination was retroactive to the period between October 3, 2013 and December 31, 2013.

19. There is evidence that the employer gave a false reason; [*Hertz Equipment Rental Corp. v. Barousse*, 365 S.W.3d 46, 54 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2011, pet. denied); *Parker v. Valerus Compression Services, LP*, 365 S.W.3d 61, 67 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2011, pet. denied) The owner who had notice of the claim since the day it occurred, gave the false reason of “job abandonment” despite the statement that Plaintiff’s workers compensation status was the real reason. Plaintiff had been in contact with various persons at the company including the owner during the period of October 3, 2013 and December 31, 2013.

### Conclusion

20. The statement of the owner that the inability to return to full duty as reflected in the February 18, 2014 Texas Workers Compensation Work Status Report and the notes taken by Plaintiff at the time the words were spoken, raise material issues of genuine fact of the wrongful discharge of the Plaintiff in retaliation for filing a workers’ compensation claim.

6. “But for” the filing of the claim the discharge would not have occurred; *Vallance v. Irving C.A.R.E.S., Inc.*, 14 S.W.3d 833, 837 (Tex.App.—Dallas 2000). The proof that the Plaintiff filed a claim in good faith, instituted proceedings in good faith and was fired on a false reason, in proximity of the February 18, 2014 Texas Workers Compensation Work Status Report are

PLAINTIFF GREG MOODY'S RESPONSE TO DEFENDANT'S MOTION FOR

evidentiary matters that the raises material issues of genuine fact in response to the Defendants 'no-evidence' motion for summary judgment.

**Prayer**

Wherefore Plaintiff, Greg Moody requests that this Court deny the Defendant's motion for no evidence summary judgment.

Respectfully submitted.

/s/ Kevin A. Murray

**Kevin A. Murray**

State Bar. No. 24007720

Galleria Financial Center

5075 Westheimer Rd., Suite 980

Houston, Texas 77056

Telephone: (713) 355-5500

Facsimile: (888) 331-5747

kmurray@marrlaw.com

**ATTORNEY FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

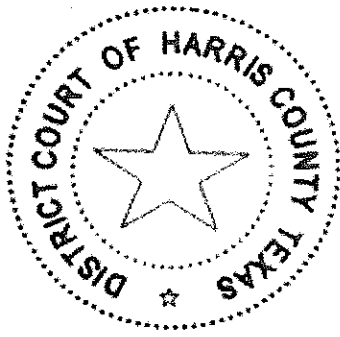
I certify that a true and correct copy of the following document has been duly served upon all counsel of record, in accordance with the Texas Rules of Civil Procedure by:

- ☒ Electronic Notification;
- ☐ Federal Express;
- ☐ First Class Mail;
- ☐ Hand Delivery;
- ☐ Facsimile Transmittal; and/or
- ☐ Certified Mail Return Receipt Requested.

On this the 5<sup>th</sup> day of June 2017.

/s/ Kevin A. Murray

Kevin A. Murray



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380623

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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Exhibit "A"

## CAUSE NO. 2016-24799

<b>GREG MOODY,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>REFINERY SPECIALTIES, INC.,</b>	§	
<b>Defendant.</b>	§	<b>189<sup>th</sup> DISTRICT COURT</b>

---

**PLAINTIFF GREG MOODY'S DECLARATION IN SUPPORT OF OPPOSITION TO  
DEFENDANT REFINERY SPECIALTIES, INC., MOTION FOR  
NO-EVIDENCE SUMMARY JUDGMENT**

---

1. I, Gregg Moody, declare: I was hired by Defendant Refinery Specialties, Inc., as a truck driver on November 12, 2012. I was earning more than \$73,000.00 for the year 2013, at the time of my injury. (a true and correct copy of my 2013 W-2 Wage and Tax Statement, is attached and incorporated by reference as Exhibit "B")
2. On October 2, 2013, I suffered a lower back injury in the performance of my duties for the Defendant. The company arranged for me to be taken to Dimmit Regional Hospital. The Company safety director, George, came to the hospital. After I was released I was transported to my home in College Station, Texas. I underwent a MRI at the College Station Medical Center on October 5, 2013 (a true and correct copy of the MRI report is attached and incorporated by reference as Exhibit "C")
3. I notified the company on the date of injury, and I was placed on workers compensation leave on October 4, 2013. I spoke with various company representatives, including the owner on October 3, 2013 immediately after the injury. I also spoke to the owner after I received a return to work with restrictions from Dr. P. Mark Glencross (a true and correct copy of the October 22, 2013 Texas Workers Compensation Work Status Report is attached and incorporated by reference as Exhibit "D") I was physically present to receive confirmation from Dr. Glencross' office, that the October 22, 2013, Texas Workers Compensation Work Status Report had been sent to the company.

4. On or about October 24, 2013, I called Thomas Kahlden, I was told there was no light duty, and I could only return to work if I had a full release to work. During my entire employment with Defendant, I was never given or made aware of any written, published requirement to call the owner of the business, while on Workers' Compensation. During the period of October 3, 2013 to December 31, 2013, I was in contact with my supervisor, the safety director, the owner, and the office manager, Tamara Roberts. I gave my telephone records of the contacts to my attorney in 2015.

5. On February 19, 2014, with an authorization to return to work with restrictions, per the February 18, 2014 Texas Workers Compensation Work Status Report (a true and correct copy of the February 18, 2014 Texas Workers Compensation Work Status Report is attached and incorporated by reference as Exhibit "E"). I contacted the office manager regarding, the owner came on the phone informed me that I had been terminated for job abandonment on December 31, 2013. A letter dated February 20, 2014 was sent to me stating that my "failure to meet a requirement to check in with the owner "as my supervisor between October 2013 and December 31, 2013 was "job abandonment". (a true and correct copy of the letter is attached in incorporated by reference as Exhibit "F").

6. The February 18, 2014, Texas Workers Compensation Work Status Report was the clinical recovery plateau and made the foundation for the designated doctor, Glencross to issue a MMI on March 21, 2014. (a true and correct copy of Dr. Glencross' report is attached and incorporated by reference as Exhibit "F").

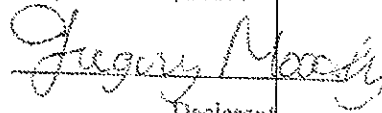
7. Based on belief and information the owner terminated me because I filed a claim and was awaiting a proceeding for MMI/IR as a result of the February 18, 2014 Texas Workers Compensation Work Status Report. The owner acted negatively toward me on February 19, 2014 stating that "he could not hold my job because he had a business to run" and "didn't know when I would return." I was so shocked I made a note on that day immediately after the call. (a true and correct copy of the note is attached and incorporated by reference as Exhibit "G").

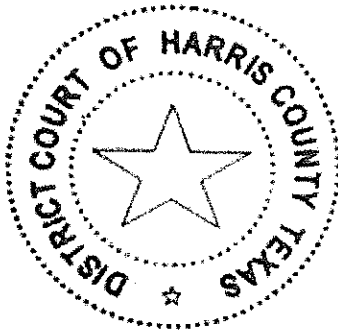
8. I was terminated retroactively due to my pending MMI proceeding with a designated physician. I did not abandon my job and I was in constant contact by Texas Workers Compensation Work Status Reports with the company. I was never made aware of any duty to report and check in with the owner as "my supervisor" between October 2013 and December 31, 2013. I stayed in contact with the company, and discussed my status with the owner during the period between October 2013 and December 31, 2013. The owner had given the parameters to return to work in October of 2013, and never discussed any reporting requirements outside of complying with the medical directives and submitting Worker's Compensation Status Reports. I was a first-time workers compensation claimant, at Defendant's operations, I was never given any written published instruction regarding contact requirements; nor did I see any other worker, on Workers Compensation, be required to stay in contact with the owner of a company of several hundred employees.

JURAT

My name is Gregory Moody, my date of birth is February 11, 1989, my address 24323 Broken Bow Lane, Hockley, Texas 77447. I declare under the penalty of perjury that every statement in the foregoing Declaration is within my personal knowledge and is true and correct.

Executed in Harris County, State of Texas, on the 2<sup>nd</sup> day of June 2, 2017.

  
Declarant



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

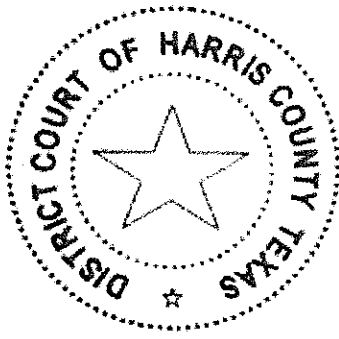
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Exhibit "B"

[illegible]



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380625

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HARRIS COUNTY, TEXAS

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Exhibit "C"

- College Station Medical Center
- 1604 Rock Prairie
- College Station, TX 77845
- 979 764 5190

PT. Name: MOODY, GREGORY A

MRN: 375277

DOB: 19890211

Sex: M

PT. Class: I

Pt. Location: MS2

Account Number: 7358198

Ordering MD: 7201

Attending MD: MORAN, KATE

Admitting MD: PASSI, KAPIL

Study Date: 10/05/2013 10:08:19

Accession #: 73581980001500

Procedure Code: MR LSPWV

Procedure: MR LUMB SPINE W-WO C

Reason for Study: BILATERAL LE PAIN AND LBP

MRI of lumbar spine performed without contrast enhancement:

History: Bilateral lower extremity pain and low back pain.

The vertebral bodies are normal in height. Disc spaces appear well-preserved. There are disc desiccation changes at L4-L5.

There is no significant periaortic adenopathy. The visualized portions of the kidneys are unremarkable.

L1-L2: Unremarkable.

L2-L3: Unremarkable.

L3-L4: Unremarkable.

L4-L5: There is a central disc protrusion at this level indenting the anterior margin of the cord and associated with some minimal canal stenosis. There is some borderline bilateral foraminal narrowing.

L5-S1: There is a very mild disc bulge present at this level some borderline bilateral foraminal narrowing no central canal stenosis.

Impression:

1. Central disc protrusion at L4-L5 indenting the anterior margin of the cord in association minimal canal stenosis. Other findings as noted above.

- Transcribed by: Powerscribe

Dictated By: Campbell, James

Dictated on: 10/05/2013 11:04:54

Signed By: Campbell, James

Signed On: 10/05/2013 11:10:08

- College Station Medical Center  
- 1604 Rock Prairie  
- College Station, TX 77845  
- 979 764 5100

Pt. Name: MOODY, GREGORY A

MRN: 375277

DOB: 19890211

Sex: M

Pt. Class: I

Pt. Location: MS2

Account Number: 7358198

Ordering MD: 7823

Attending MD: MORAN, KATE

Admitting MD: PASSI, KAPIL

Study Date: 10/05/2013 11:28:02

Accession #: 73581980001100

Procedure code: MRTSP

Procedure: MR-THOR SPINE WO CON

Reason for Study: mri thoracic and lumbar with iv contrast back pain with weak

MRI thoracic spine performed without contrast enhancement:

History: mid back pain.

The vertebral bodies are normal in height. Disc spaces all appear well-preserved. No canal stenosis. Spinal cord is normal in appearance. No abnormal signal change seen. The paravertebral soft tissues appear unremarkable.

Impression: unremarkable MRI of thoracic spine.

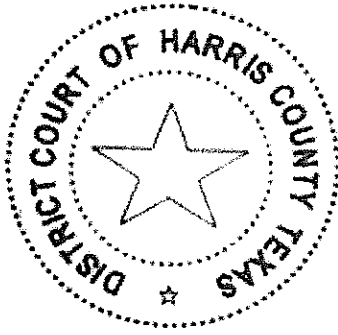
- Transcribed By: PowerScribe

Dictated By: Campbell, James

Dictated on: 10/05/2013 11:27:09

Signed By: Campbell, James

Signed on: 10/05/2013 11:30:08



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380626

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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Exhibit "D"

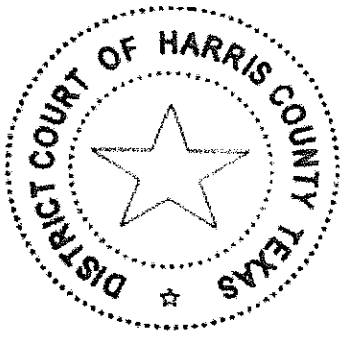
Employee - You are required to report your injury to your employer within 30 days if your employer has workers' compensation insurance. You have the right to free assistance from the Texas Department of Insurance, Division of Workers' Compensation and may be eligible to obtain medical and income benefits. For further information, contact your local Division Field Office or (800) 542-7033.



Empleado - Es necesario que reporte su lesión a su empleador dentro de 30 días a partir de la fecha en que su lesión si es que su empleador cuenta con un seguro de compensación para trabajadores. Usted tiene derecho a recibir asistencia gratuita por parte de la División de Compensación para Trabajadores, y también puede recibir derechos, beneficios médicos e ingresos. Para mayor información, comuníquese con la oficina local de la División al teléfono (800) 542-7033.

### TEXAS WORKERS' COMPENSATION WORK STATUS REPORT

PART I: GENERAL INFORMATION		5. Doctor's Name and Degree		(For transmission purposes only)		Date Being Sent	
1. Injured Employee's Name <b>Greg Moody</b>		6. Clinic/Facility Name <b>CS Medical Center Occupational Medicine</b>		8. Employer's Name <b>Refinery Specialties, Inc.</b>		10/22/2013	
2. Date of Injury <b>10/22/2013</b>	3. Social Security Number (last 4) <b>XX-XX-9129</b>	7. Clinic/Facility/Doctor Phone & Fax <b>(979) 680-9673 (979) 485-8650</b>		10. Employer's Fax # or Email Address (if known) <b>(979) 826-4915 sharon@csichem.com</b>			
4. Employee's Description of Injury/Incident		8. Clinic/Facility/Doctor Address (street address) <b>3201 University Drive East</b>		11. Insurance Carrier <b>Texas Mutual</b>			
		City State Zip <b>Bryan, TX 77802</b>		12. Carrier's Fax # or Email Address (if known) <b>(512) 224-3839</b>			
PART II: WORK STATUS INFORMATION (FULLY COMPLETE ONE INCLUDING ESTIMATED DATES AND DESCRIPTION IF (13C) AS APPLICABLE)							
13. The injured employee's medical condition resulting from the workers' compensation injury.							
<input type="checkbox"/> (a) will allow the employee to return to work as of _____ (date) without restrictions. <input checked="" type="checkbox"/> (b) will allow the employee to return to work as of <b>10/22/2013</b> (date) with the restrictions identified in PART II, which are expected to last through <b>10/24/2013</b> (date). <input type="checkbox"/> (c) has prevented and still prevents the employee from returning to work as of _____ (date) and is expected to continue through _____ (date).							
The following describes how this injury prevents the employee from returning to work:							
PART III: ACTIVITY RESTRICTIONS* (ONLY COMPLETE IF BOX 13(B) IS CHECKED)							
14. POSTURE RESTRICTIONS (if any):		17. MOTION RESTRICTIONS (if any):		19. MISC. RESTRICTIONS (if any):			
Max Hours per day: 0 2 4 6 8 Other		Max Hours per day: 0 2 4 6 8 Other		<input type="checkbox"/> Max hours per day of work: _____ <input type="checkbox"/> Sit/Stretch breaks of _____ per _____ <input type="checkbox"/> Must wear splint/cast at work <input type="checkbox"/> Must use crutches at all times <input type="checkbox"/> No driving/operating heavy equipment <input type="checkbox"/> Can only drive automatic transmission <input type="checkbox"/> No work / _____ hours/day work: <input type="checkbox"/> in extreme hot/cold environments <input type="checkbox"/> at heights or on scaffolding <input type="checkbox"/> Must keep _____ elevated <input type="checkbox"/> Clean & dry			
Standing <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Sitting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Kneeling/Squatting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Bending/Stooping <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Pushing/Pulling <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Twisting <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		Walking <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Climbing stairs/ladders <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Grasping/Squeezing <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Wrist flexion/extension <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Reaching <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Overhead Reaching <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Keyboarding <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Other <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/> No skin contact with: _____ <input type="checkbox"/> Dressing changes necessary in work <input type="checkbox"/> No running 20. MEDICATION RESTRICTIONS (if any): <input type="checkbox"/> Must take prescription medication(s) <input type="checkbox"/> Advised to take over-the-counter meds <input checked="" type="checkbox"/> Medication may make drowsy (possible safety/driving issues)			
15. RESTRICTIONS SPECIFIC TO (if applicable):		18. LIFT/CARRY RESTRICTIONS (if any):					
<input type="checkbox"/> Left Hand/Wrist <input type="checkbox"/> Left Leg <input type="checkbox"/> Right Hand/Wrist <input type="checkbox"/> Right Leg <input type="checkbox"/> Left Arm <input checked="" type="checkbox"/> Back <input type="checkbox"/> Right Arm <input type="checkbox"/> Left Foot/Ankle <input type="checkbox"/> Neck <input type="checkbox"/> Right Foot/Ankle <input type="checkbox"/> Other		<input type="checkbox"/> May not lift/carry objects more than <b>10</b> lbs. for more than _____ hours per day <input type="checkbox"/> May not perform any lifting/carrying <input type="checkbox"/> Other					
16. OTHER RESTRICTIONS (if any): <b>Back: Work should be limited to 4 hours per day. Lifting should be limited to 10 pounds or less. Sit stand two hour max. No bend or stoop. Do not operate heavy machinery.</b>							
<small>*These restrictions are based on the doctor's best understanding of the employee's essential job functions. If a particular restriction does not apply, it should be designated "if modified duty that meets these restrictions is not available, the patient should be considered to be off work. Note - these restrictions should be followed outside of work as well as at work.</small>							
PART IV: TREATMENT/FOLLOW-UP APPOINTMENT INFORMATION							
21. Work Injury Diagnosis Information: 1. Low Back Pain (724.2) 2. Discen disc, Lumbar spine (722.52)		22. Expected Follow-up Services Include:					
		<input checked="" type="checkbox"/> Evaluation by the treating doctor on <b>10/23/2013</b> (date) at <b>9:30 AM</b> <input type="checkbox"/> Referral to/Consult with _____ on _____ (date) at _____ <input checked="" type="checkbox"/> Physical medicine _____ X per week for _____ weeks starting on _____ (date) at _____ <input type="checkbox"/> Special studies (list): _____ on _____ (date) at _____ <input type="checkbox"/> None. This is the last scheduled visit for this problem. At this time, no further medical care is anticipated.					
23. Date of visit <b>10/22/2013 9:45 AM</b>	EMPLOYEE'S SIGNATURE 	DOCTOR'S SIGNATURE 	Visit Type: <input type="checkbox"/> Initial <input checked="" type="checkbox"/> Follow-up	Role of Doctor: <input type="checkbox"/> Designated doctor <input checked="" type="checkbox"/> Treating doctor <input type="checkbox"/> Referral doctor <input type="checkbox"/> Operating doctor	<input type="checkbox"/> Carrier selected RMC <input type="checkbox"/> OWC selected RMC <input type="checkbox"/> Other doctor		



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380627

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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Exhibit "E"



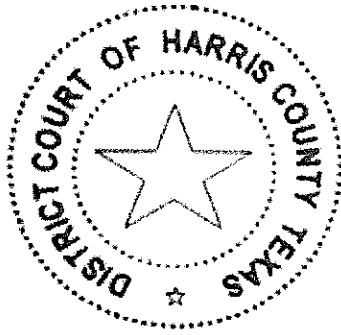
Employee - You are required to report your injury to your employer within 30 days of your employer's workers' compensation. You have the right to free assistance from the Texas Department of Insurance, Division of Workers' Compensation and may be entitled to workers' medical and income benefits. For more information call your local Division field office or 1-800-252-7331.



Empleado - Es necesario que reporte su lesión a su empleador dentro de 30 días a partir de la fecha en que se lesionó o de que su empleador pague con un seguro de compensación para trabajadores. Usted tiene derecho a recibir asistencia gratuita por parte de la División de Compensación para Trabajadores, y también puede tener derecho a ciertos beneficios médicos y monetarios. Para mayor información comuníquese con la oficina local de la División al teléfono 1-800-252-7331.

## TEXAS WORKERS' COMPENSATION WORK STATUS REPORT

<b>PART I: GENERAL INFORMATION</b>		5. Doctor's Name and Degree Shawn Jensen, PA-C		(for transmission purposes only) Date Being Sent 02/18/2014	
1. Injured Employee's Name Craig Moody		6. Clinic/Facility Name CS Medical Center Occupational Medicine		9. Employer's Name Refinery Specialties, Inc.	
2. Date of Injury 10/22/2013	3. Social Security Number (last 4) XXX-XX-9829	7. Clinic/Facility/Doctor Phone & Fax (979) 680-9675 (979) 485-8650		10. Employer's Fax # or Email Address (if known) (979) 836-4935 sharon@nicham.com	
4. Employee's Description of Injury/Accident		8. Clinic/Facility/Doctor Address (street address) 3201 University Drive East City State Zip Bryan, TX 77802		11. Insurance Carrier Texas Mutual	
				12. Carrier's Fax # or Email Address (if known) (512) 224-3839	
<b>PART II: WORK STATUS INFORMATION (FULLY COMPLETE ONE INCLUDING ESTIMATED DATES AND DESCRIPTION IN 13(a) AS APPLICABLE)</b>					
13. The injured employee's medical condition resulting from the workers' compensation injury:					
<input type="checkbox"/> will allow the employee to return to work as of _____ (date) without restrictions.					
<input checked="" type="checkbox"/> will allow the employee to return to work as of <u>02/18/2014</u> (date) with the restrictions identified in PART III, which are expected to last through <u>03/04/2014</u> (date).					
<input type="checkbox"/> has prevented and still prevents the employee from returning to work as of _____ (date) and is expected to continue through _____ (date).					
The following describes how this injury prevents the employee from returning to work:					
<b>PART III: ACTIVITY RESTRICTIONS* (ONLY COMPLETE IF BOX 13(b) IS CHECKED)</b>					
14. POSTURE RESTRICTIONS (if any):		17. MOTION RESTRICTIONS (if any):		18. MISC. RESTRICTIONS (if any):	
Max hours per day: 0 3 4 6 8 Other		Max hours per day: 0 2 4 6 8 Other		<input type="checkbox"/> Max hours per day of work: _____ <input type="checkbox"/> Sit/Stretch breaks of _____ per _____ <input type="checkbox"/> Must wear splint/cast at work <input type="checkbox"/> Must use crutches or all limbs <input type="checkbox"/> No driving/operating heavy equipment <input type="checkbox"/> Can only drive automatic transmission <input type="checkbox"/> No work / _____ hours/day work: <input type="checkbox"/> In extreme hot/cold environments <input type="checkbox"/> at heights or on scaffolding <input type="checkbox"/> Must keep _____ elevated _____ clean & dry <input type="checkbox"/> No skin contact with _____ <input type="checkbox"/> Dressing changes necessary at work <input type="checkbox"/> No running <input type="checkbox"/> Medication restrictions (if any): <input type="checkbox"/> Must take prescription medication(s) <input type="checkbox"/> Advised to take over-the-counter meds <input type="checkbox"/> Medication may make drowsy (possible safety/driving issues)	
Standing <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Sitting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Kneeling/Squatting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Bending/Stooping <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Pushing/Pulling <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Twisting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Other: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		Walking <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Climbing ladders <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Grasping/Squeezing <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Wrist flexion/extension <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Reaching <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Overhead Reaching <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Keyboarding <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Other: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
15. RESTRICTIONS SPECIFIC TO (if applicable):		18. LIFT/CARRY RESTRICTIONS (if any):			
<input type="checkbox"/> Left Hand/Wrist <input type="checkbox"/> Left Leg <input type="checkbox"/> Right Hand/Wrist <input type="checkbox"/> Right Leg <input type="checkbox"/> Left Arm <input type="checkbox"/> Back <input type="checkbox"/> Right Arm <input type="checkbox"/> Left Foot/Ankle <input type="checkbox"/> Neck <input type="checkbox"/> Right Foot/Ankle <input type="checkbox"/> Other: _____		<input type="checkbox"/> May not lift/carry objects more than _____ lbs for more than _____ hours per day <input type="checkbox"/> May not perform any lifting/carrying <input type="checkbox"/> Other: _____			
19. OTHER RESTRICTIONS (if any): Simple Work should be limited to 8 hours per day. Lifting should be limited to 20 pounds or less. Do not operate heavy machinery.					
*These restrictions are based on the doctor's best understanding of the employee's essential job functions. If a particular restriction does not apply, it should be designated, if needed, as not applicable. If needed, duty that needs three restrictions is not available, the patient should be considered to be off work. Middle-weight restrictions should be followed outside of work as well as at work.					
<b>PART IV: TREATMENT/FOLLOW-UP APPOINTMENT INFORMATION</b>					
21. Work Injury Diagnosis Information: 1. Low Back Pain (724.2). 2. Disc degeneration, Lumbar spine (722.52). 3. Sprain, Lumbar Spine (847.2).		22. Expected Follow-up Services Include: <input checked="" type="checkbox"/> Evaluation by the treating doctor on <u>03/04/2014</u> (date) at <u>9:00 AM</u> <input type="checkbox"/> Referral to/Consult with _____ on _____ (date) at _____ <input type="checkbox"/> Physical medicine _____ X per week for _____ weeks starting on _____ (date) at _____ <input type="checkbox"/> Special studies (list): _____ on _____ (date) at _____ <input type="checkbox"/> None. This is the last scheduled visit for this problem. At this time, no further medical care is warranted.			
Date/Time of Visit 02/17/2014 9:00 AM	EMPLOYEE'S SIGNATURE 	DOCTOR'S SIGNATURE 	Visit Type <input type="checkbox"/> Initial <input checked="" type="checkbox"/> Follow-up	Role of Doctor <input type="checkbox"/> Designated doctor <input type="checkbox"/> Treating doctor <input type="checkbox"/> Referral doctor <input type="checkbox"/> Consulting doctor	<input type="checkbox"/> Carrier-selected RIME <input type="checkbox"/> DWR-selected RIME <input type="checkbox"/> Other doctor



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380628

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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Exhibit “F”



## REFINERY SPECIALTIES, INC.

Specialty Products for the Oil and Gas Industry

Refinery Specialties, Inc.  
P. O. Box 577  
Hempstead, Texas 77445

02/20/2014

Gregory Moody  
835 Crepe Myrtle  
College Station, Texas 77845

Dear Mr. Moody:

Pursuant to your request, this letter is to confirm that your position with Refinery Specialties, Inc. was terminated effective December 31, 2013, due to your failure to report and check in with your supervisor, Thomas Kahlden. This includes, without limitation, your failure to respond to multiple phone calls and voice messages left for you between October of 2013—the last time we received any communication from you—and December 31, 2013.

If you have not already, you will be receiving a package of information which includes details on any continuing benefits.

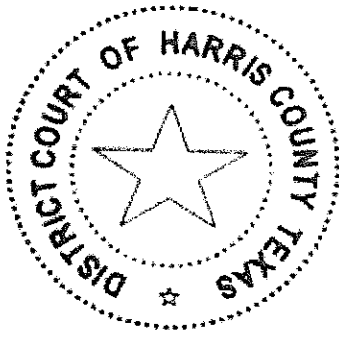
If I can be of any help during this transition, please let me know.

Sincerely,

Tamara Roberts

Office Manager

HOU 343440.1



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380629

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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Exhibit "G"

979-703-6768

03/21/2014 9:00 a.m. 03-25-2014

2/3



College Station  
Medical Center  
Occupational Medicine

DATE: 03/21/2013  
PATIENT: Gregory Moody  
DATE OF INJURY: 10/02/2013  
INSURER: Myra Lopez  
Coventry Workers' Compensation Services  
(888) 252-5075  
(314) 513-9407  
F (800) 863-8860  
CLAIM #980000761478

Tammy Nicholas  
Texas Mutual  
6210 East Hwy 290  
Austin TX 78723  
(888) 532-5246  
F (512) 224-3886

EMPLOYER: Sharon Vantilburg  
Refinery Specialties Inc  
PO Box 577  
Hempstead, TX 77445  
(979) 826-4961  
F (979) 826-4935

REASON: NIM/IR

**HISTORY:** Mr. Moody has been treated at this clinic for 5 months following a work related injury. He has been treated conservatively with rest, medication, therapy, and restricted activity. He was found to have an abnormal MRI. Pain, limitation, history, and examination are concordant with the disc displacement found on MRI. His clinical recovery reached a plateau, following which further improvement was not noted after February 18, 2014. His range of motion, pain level and medication use have been similar since that date. He was sent for a Functional Capacity Evaluation on March 18, 2014 and failed to demonstrate sufficient ability to return to work. His examination failed to reveal objective signs of radiculopathy. He does continue to demonstrate guarding and paraspinal muscular spasm in the low back. There are no signs of spinal fracture.

**DISCUSSION:** Surgical evaluation under W/C insurance has been denied and his claim is in dispute. Based on his static clinical status and unchanged subjective symptom, his functional testing results, and his lack of medical options, further meaningful recovery is unlikely and he is at Maximal Medical Improvement. Based on the AMA Guides 4<sup>th</sup> edition, his impairment is best described by DRE Lumbosacral Category II, page 102. This is described to be a 5% Whole Person Impairment. He

3201 University Drive East / Suite 135 / Bryan, TX 77802 / (979) 800-WORK (9675) / Fax (979) 485-8650

RECEIVED TIME 3/25/2014 9:00:14 AM (Central Daylight Time)

579-762-6768

03/25/2014 09:52:29 a.m.

3/5

Moody, Greg 2

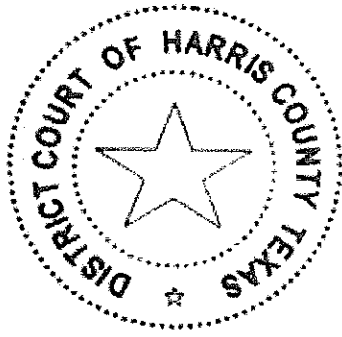
continues with medical recommendations to avoid moderate or heavy lifting or carrying, avoid frequent bending or stooping and avoid continuous standing or walking. His medical condition continues to require medication and may at times require that he avoid activities outside his home. He may also require more intensive medical treatment with likely exacerbations in his future. If he seeks more aggressive surgical care on his own, there is the potential for further clinical recovery, although this can not be guaranteed. He has been advised to make the best of his situation and ability, to keep active, perform his home exercises and stretches.

P. Mark Glenicross, MD, MPH, FACOEM, FAAPMR  
Board Certified American Board of Preventive Medicine (ABPM): Occupational Medicine  
Board Certified American Board of Physical Medicine and Rehabilitation (ABPMR)  
Board Certified Subspecialty: Sports Medicine (ABPMR)  
Certification in Evaluation of Disability and Impairment Rating (AAOEP)  
Designated Doctor: (Texas, TDI-LWC)

3201 University Drive East | Suite 135 | Bryan, TX 77802 | (979) 680-WORK (9675) | Fax (979) 485-8650

RECEIVED TIME 3/25/2014 8:53:11 AM [Central Daylight Time]





I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380630

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

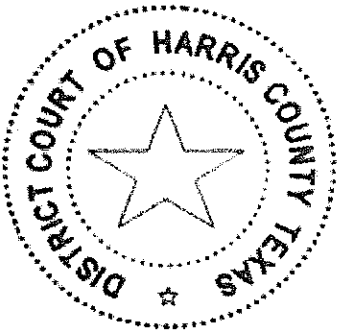
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Exhibit "H"

~~2-18-14~~

2-18-14 12:11pm

Thomas (M) - He informed me I was fired on Dec 31, 13 for abandonment of my job. Thomas also said I could have my job back once I was released from the Doctors care. He inform me he could hold my job for me, because he had a business to run and didn't know when I was going to return. ~~He also called or~~ ~~left messages for me~~ ~~the~~ ~~times~~ Thomas said he tried calling me, but I never received any phone call or messages. I ~~filled out an~~ ~~information sheet~~ while off from work ~~about~~ around ~~the~~ ~~indoor~~ outdoor.



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380631

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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7

5/22/2017 10:37:04 AM  
 Chris Daniel - District Clerk  
 Harris County  
 Envelope No: 17162545  
 By: MOSLEY, DEANDRA S  
 Filed: 5/22/2017 10:37:04 AM

CAUSE NO. 2016-24799

GREG MOODY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
REFINERY SPECIALTIES INC.,	§	
	§	
Defendant.	§	189 <sup>th</sup> JUDICIAL DISTRICT

---

**ORDER GRANTING DEFENDANT REFINERY SPECIALTIES INC.'S  
 MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT**

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On this day came on to be considered, Defendant Refinery Specialties Inc.'s Motion for No-Evidence Summary Judgment in the above-styled and numbered cause. The Court, having considered the Motion for No-Evidence Summary Judgment, is of the opinion that it should be **GRANTED** in its entirety. It is therefore

**ORDERED, ADJUDGED and DECREED** that Defendant Refinery Specialties Inc.'s Motion for No-Evidence Summary Judgment is in all parts **GRANTED**. Further, it is

**ORDERED, ADJUDGED and DECREED** that all of Plaintiffs' claims and causes of actions against Defendant Refinery Specialties Inc. are hereby dismissed with prejudice.

As the Court intends for this Order Granting Summary Judgment to be a final judgment, any relief not expressly granted herein is hereby **DENIED**.

Signed this the \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
 JUDGE PRESIDING



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75185650

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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8



6/5/2017 6:25:59 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 17433412  
By: MCNEAL, ARIONNE  
Filed: 6/5/2017 6:25:59 PM

CAUSE NO. 2016-24799

GREG MOODY,  
Plaintiff,

v.

REFINERY SPECIALTIES, INC.,  
Defendant.

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

189<sup>th</sup> DISTRICT COURT

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ORDER DENYING MOTION FOR SUMMARY JUDGMENT

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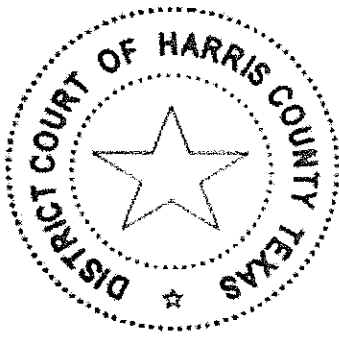
On \_\_\_\_\_ came to be considered Defendant's Motion for Summary Judgment, having reviewed the Motion, finds that there is sufficient cause for this order to be issued.

It is therefore, ORDERED that said Motion be, and the same hereby, DENIED.

---

PRESIDING JUDGE

ORDER - SOLO PAGE



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75380632

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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9

6/7/2017 3:38:48 PM  
 Chris Daniel - District Clerk Harris County  
 Envelope No. 17482561  
 By: ARIONNE MCNEAL  
 Filed: 6/7/2017 3:38:48 PM

## CAUSE NO. 2016-24799

GREG MOODY,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
REFINERY SPECIALTIES, INC.,	§	
Defendant.	§	189 <sup>th</sup> DISTRICT COURT

PLAINTIFF'S UNOPPOSED MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff makes this motion for continuance on the grounds that he is not able to try this case, at its present setting. In support of this motion they show the Court the following:

I.

1. This case currently is set for jury trial for the two-week period starting May 12, 2017. This is suit based on retaliation involving an workers' compensation claim.
2. Very little discovery has been done, neither Plaintiff nor Defendant has been deposed. This case has yet to mediated and both Plaintiffs' and Defendant's counsel have discussed mediation as a means to resolve this case. Plaintiff and Defendant feel that an agreement may be reached if this case were to be continued and mediated. Plaintiff requests a 120-day continuance of this case. Also, the parties request a new scheduling order.
3. The court has the discretion to grant a motion for continuance as part of its inherent power to control its own docket to ensure that cases proceed before it in a timely and orderly manner. TRCP 247, 251-252 State v. Wood Oil Distrib., Inc., 751 S.W.2d 863, 865 (Tex. 1988).

Conclusion

This is the first motion for continuance requested in this case. This motion is not sought for the purposes of delay, but only so that justice may be done.

WHEREFORE, PREMISES CONSIDERED, the parties request that this Court continue this case for at least 90 days and a new scheduling order be issued.

Respectfully submitted,

/s/ Kevin A. Murray  
Kevin A. Murray  
State Bar. No. 24007720  
Galleria Financial Center  
5075 Westheimer Road, Suite 980  
Houston, Texas 77056  
Tel. (713) 555-5500  
Fax. (888) 331-5747  
[kmurray@murrayaw.com](mailto:kmurray@murrayaw.com)

CERTIFICATE OF CONFERENCE

I spoke with Tracy Wolf and Ms. Wolf stated that she is unopposed to this motion.

/s/ Kevin A. Murray  
Kevin A. Murray

VERIFICATION

STATE OF TEXAS

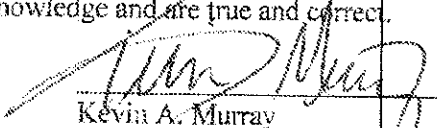
§

COUNTY OF HARRIS

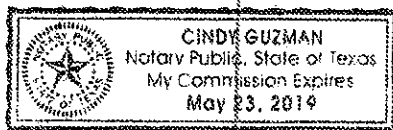
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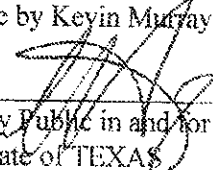
§

On this day, Kevin A. Murray appeared before me, the undersigned notary public. After I administered an oath to him, he said that the statements in the Motion for Continuance are within his personal knowledge and are true and correct.

  
Kevin A. Murray

SWORN TO and SUBSCRIBED before me by Kevin Murray on June 07, 2017.



  
Notary Public in and for  
the State of TEXAS

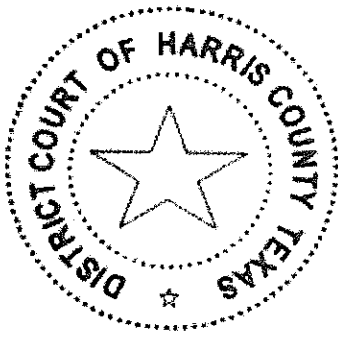
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the following document has been duly served upon all counsel of record, in accordance with the Texas Rules of Civil Procedure by:

- ☒ Electronic Notification;
- ☐ Federal Express;
- ☐ First Class Mail;
- ☐ Hand Delivery;
- ☐ Facsimile Transmittal; and/or
- ☐ Certified Mail Return Receipt Requested.

On this the 7<sup>th</sup> day of June 2017.

/s/ Kevin A. Murray  
Kevin A. Murray



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this November 7, 2017

Certified Document Number: 75415616

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

10



6/7/2017 3:38:48 PM  
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Harris County  
Envelope No: 17482561  
By: MCNEAL, ARIONNE  
Filed: 6/7/2017 3:38:48 PM

CAUSE NO. 2016-24799

GREG MOODY,  
Plaintiff,

v.

REFINERY SPECIALTIES, INC.,  
Defendant.

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

189<sup>th</sup> DISTRICT COURT

---

ORDER GRANTING UNOPPOSED MOTION FOR CONTINUANCE

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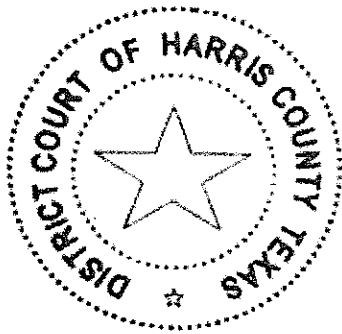
On \_\_\_\_\_ came to be considered Plaintiff's Unopposed Motion for Continuance. having reviewed the Motion, finds that there is sufficient cause for this order to be issued.

It is therefore, ORDERED that said Motion be, and the same hereby, GRANTED.

---

PRESIDING JUDGE

ORDER - SOLO PAGE



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Certified Document Number: 75415617

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS